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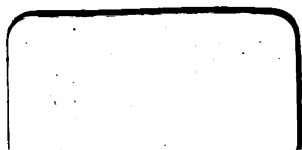
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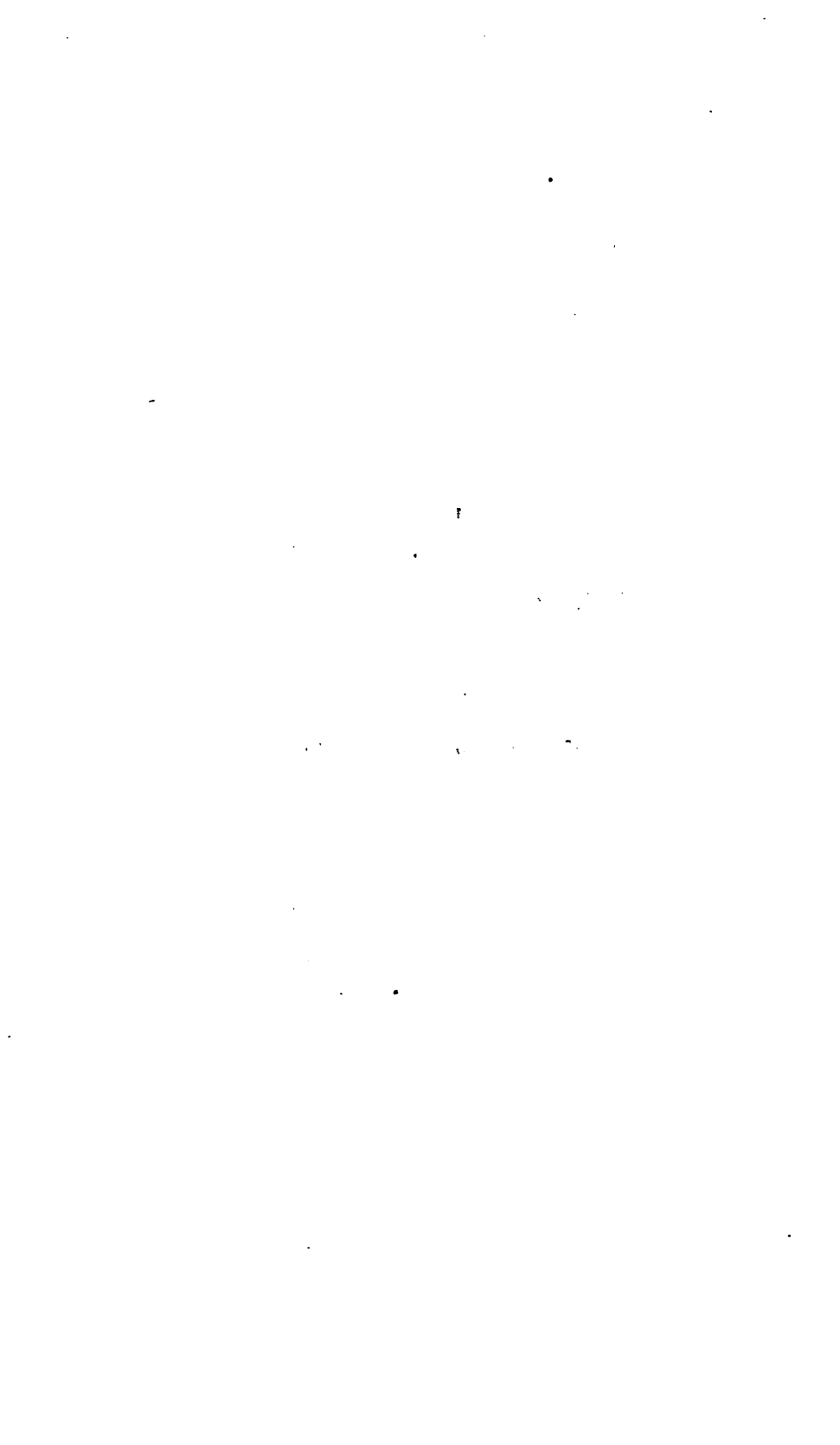
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ON THE
USE OF TORTURE
IN THE
CRIMINAL LAW OF ENGLAND.



A READING

ON THE

USE OF TORTURE

IN THE

CRIMINAL LAW OF ENGLAND

PREVIOUSLY TO THE COMMONWEALTH;

**DELIVERED AT NEW INN HALL IN MICHAELMAS TERM, 1836,
BY APPOINTMENT OF THE HONOURABLE SOCIETY
OF THE MIDDLE TEMPLE.**

By DAVID JARDINE, Esq.,
OF THE MIDDLE TEMPLE, BARRISTER AT LAW.

**LONDON:
BALDWIN AND CRADOCK.**

1837.

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P R E F A C E.

AS the public are probably unacquainted with the Institution at which the following Reading was delivered, it may be desirable to prefix a summary account of the origin and nature of the exercises at New Inn, as they are at present held by the direction of the Honourable Society of the Middle Temple.

Though the speculations of antiquarians have varied as to the origin of the Inns of Court and Chancery, there is no doubt that in the 15th and 16th centuries they were appropriated to the purposes of legal education according to the habits of those times. The Inns of Chancery are said to have been chiefly occupied by the officers and clerks of the Chancery and the superior Courts of Justice; but it is well ascertained that they were also frequented by students for the Bar, who prosecuted there certain elementary branches of

legal learning, such as the nature and properties of original and judicial writs, then considered as the first rudiments of the common law. After a certain period of devotion to these objects, the students, according to their age and proficiency, were removed from the Inns of Chancery and admitted as members of the parent Inns of Court, where a new course of study was pursued by them. This system of progressive advancement was the common course of the education of an advocate in the reign of Elizabeth; and in accordance with it, Sir Edward Coke remained upwards of a year at Clifford's Inn before he was admitted to the Society of the Inner Temple in order to keep his terms for the Bar.

From this general connexion between the Inns of Court and their dependent Inns of Chancery in the curriculum of a legal education, arose the practice of periodically sending Readers from the senior to the junior Societies. "For the help of young students in every of the Innes of Chancery," says Stow¹, "they do chuse out of every Inne of Court a Reader, being no Bencher, but an utter Barrester

¹ Stow's London, book I. chap. xxi.

there of ten or twelve yeers continuance, and of good profite in studie." The Reader so elected was deputed to repair at certain specified periods to the Inn of Chancery, for the purpose of reading and *mooting* to the students there. The proceedings at these Readings are minutely described by Dugdale and Stow. The Reader usually took with him several Barristers of the Inn of Court, and having selected some Statute for the purpose, propounded it as the subject of examination and discussion. He recited the doubts and questions which might arise or had arisen upon the several clauses, and called upon the Barristers and Students present to declare their opinions. The questions thus stated were then formally debated; and after they had been amply discussed, the Reader delivered his own opinion at length, with the reasons upon which it was founded. It appears from contemporaneous writers that these legal disputations, both in the Inns of Court and of Chancery, were prosecuted by all who attended them with a degree of zeal and animation, which seems unaccountable to those who at the present day peruse the accounts of their formal and grotesque pro-

ceedings. By means of such performances, the votaries of the law, in the days of Littleton, Coke, and Selden, were introduced to a knowledge of their profession; and though, perhaps, inapplicable to our modern usages, they were obviously calculated to produce beneficial effects in the education of a lawyer. Besides the previous study which they necessarily implied, the searching discussions of which the exercises consisted must have produced an acuteness of attention, a readiness of thought and expression, and a facility of adapting arguments to new trains of reasoning as they suddenly arose, most useful in forensic practice; while the opportunities of acquiring reputation and distinction in the several Societies, which in those times led directly to the "aurea praxis" in the Courts, supplied the strongest incitements to industry and perseverance in the acquisition of legal learning. The Readings delivered on these occasions were often published; and it is to this practice that we are indebted for some of the most profound juridical arguments in our language,—such, for instance, as Callis's Reading on the Statute of Sewers, and Sir Francis Bacon's on the Statute of Uses.

The Society of New Inn is an Inn of Chancery attached to the Middle Temple, and the practice of sending a Reader to conduct exercises there, in each of the several Law Terms, has remained to the present time. During the last century, however, being principally continued for the purpose of preserving the relation between the two Societies, the performance of these exercises had degenerated into a mere form, with which all candidates for the Bar were required to comply, though the common course was to compound for non-attendance by the payment of a small fine; but for all purposes of legal instruction, they had become entirely worthless. Upon the death of a Gentleman, who had for many years conducted these formal exercises, in the year 1833, the Benchers of the Middle Temple, actuated solely by the wish to discharge a part of that debt which, as Lord Coke says, "every man owes to the profession to which he belongs," determined upon making an effort to place them upon a more respectable footing, and to render them in some degree conducive to the purposes of

legal instruction. The chief difficulty was, that from technical circumstances arising from the nature of the connexion between the two Societies, it was necessary to reform an ancient institution and preserve its customary character, instead of constructing a new one, more suitable to the habits of education in modern times. For this reason it was impossible, without altering the whole character of the exercises, to adapt them to the delivery of a course of elementary lectures upon English law; as the limited number of times at which these Readings can be held—not exceeding six times in the year,—entirely precluded the notion of any general course of instruction upon so extensive and multifarious a subject. Besides which, as the students are not required by the ancient laws of the Society to attend more than two exercises at New Inn before they are called to the Bar, the audience is a constantly fluctuating body, and consequently a continuous course of lectures upon any one subject would be wholly out of place. It was thought advisable, therefore, to conform in this respect to the ancient practice of the Institution, by selecting a

single subject for the purpose of each Reading, and rendering it complete in itself, without attempting any general course of instruction. It was suggested that the subjects for such Readings might be illustrations of important Statutes; disquisitions upon the origin and history of particular legal institutions, such as the Trial by Jury; upon the gradual development of particular branches of our municipal laws, such as the Law of Evidence, and great part of our Commercial Law; and historical notices of the changes which advancing civilization and other causes have introduced into our system of jurisprudence. All these are subjects of much curiosity and importance, and it was supposed that Readings or Lectures, in which they were clearly and popularly treated, might be rendered interesting as well as instructive.

With these views, the exercises were commenced upon the improved system in the year 1834; and the following pages formed a part of several Readings upon the history of distinct portions of the Criminal Law of England delivered at New Inn since that time.

It has been thought proper, in confirmation

of the historical facts stated, and also for the satisfaction of the curious reader, to add in an Appendix all the original documents referred to in the Reading.

Middle Temple, Dec. 1836.

ON
THE USE
OF
TORTURE IN ENGLAND.

GENTLEMEN,

IN my former Readings in this place, I have entered at some length into the illustration of several instances in which the influence of the Royal prerogative at early periods of our history produced injustice in the administration of the Criminal law, and interfered materially with the advantages which we are accustomed, from our modern experience of the institution, to ascribe to the Trial by Jury. In addition to these, there was an offspring of prerogative, to which little attention has been paid by those who have written on the history of English law, but which was a far more unjustifiable and mischievous abuse of power than either of the instances which I have yet mentioned,—I mean the application of Torture to witnesses and accused persons, for the purpose of extracting evidence and confessions. This practice has been found in its

simplest form as a means of compulsion employed by the strong against the weak in most barbarous nations ; in its more refined state, as an instrument for obtaining judicial truth expressly recognised and allowed by law, it has prevailed until within the present century, among civilized nations. Cicero speaks of it as an existing usage among the Athenians and Rhodians, and censures the extent to which it was carried by the laws of those communities¹. In the earlier history of Roman law we find no traces of the use of torture, but it appears to have been introduced soon after the destruction of the Republic, though at first it was only employed in the case of slaves and foreigners upon charges of murder or personal violence, and was never applied to citizens. In this state, the use of torture is frequently alluded to by Cicero, Tacitus, Quintilian, and other writers as a common practice at Rome. At a later period it was applied even in the case of citizens, but apparently only upon occasion of very enormous crimes, or for the purpose of corroborating the testimony of persons who were not competent witnesses by the Roman law, and whose evidence was only received where facts could not be proved by any other means. From the Civil law the practice of torture was adopted by the procedure of most European countries into which the jurisprudence of Rome was

¹ *Oratorie Partitiones*, 34.

transfused, and in many of them continued as a portion of their judicial system until modern times.

Thus in France the '*Question préparatoire*,' which was used in order to enforce confessions where strong presumptive evidence of guilt was not thought sufficient to warrant capital punishment, was forbidden by a decree¹ of the 24th of August, 1780; and by a law of the 9th of October, 1789, torture was formally abolished in every case throughout the French dominions. In Russia, the use of torture in judicial tribunals was first interrupted by a recommendation of the Empress Catharine in 1763; and its final abolition as a part of the Russian law was effected by an Imperial Ukas in 1801². In the middle of the last century, the increasing prevalence in Germany of just and rational opinions respecting jurisprudence induced the abolition of torture in Prussia, Saxony, and Austria; but it continued to disgrace the administration of criminal justice in the majority of the German States until the present century. For instance, in Bavaria and Wurtemberg it was first suspended by ordinances in 1806, in the kingdom of Hanover in 1822, and in the Grand Duchy of Baden in 1831³. The Stat. 7 Ann. c. 21. sect. 5, declares that "no person accused of any capital offence or other crime in Scotland, shall be

¹ This remarkable decree may be found in Merlin's *Répertoire de Jurisprudence*, tit. QUESTION.

² Storch's *Annal.*, vol. vi. p. 417.

³ Mittermaier's *Deutsche Strafverfahren*, vol. i. p. 344-5.

subject or liable to any torture ;” and in England, though it is not expressly forbidden by any Act of Parliament, there is no instance of its application subsequently to the Commonwealth.

At the present day, Gentlemen, when the practice of torture has wholly disappeared from the criminal procedure of every European nation, it would be a waste of your time to refer at length to the arguments which show the inefficiency as well as the injustice of this mode of eliciting evidence. The most enlightened Jurists in all countries where the practice has prevailed have given their unequivocal testimony against it. Thus Cicero eloquently describes its fallacy and uncertainty : “ Tormenta,” says he, “ gubernat dolor, moderatur natura cujusque tum animi, tum corporis ; regit quæsitior, flectit libido, corrumpit spes, infirmat metus, ut in tot rerum angustiis nihil veritati loci relinquatur¹.” Even in the Civil law, which authorizes and directs the application of judicial torture, it is spoken of doubtfully as a means of discovering truth : “ Evidence obtained by torture,” says the Digest², “ is to be received with caution ; it is not always to be trusted, nor is it always to be disbelieved ; it is at best but a deceitful and dangerous instrument, and very often fails to extract the truth ; for many persons are gifted with such a patience or power of enduring torments, that the truth cannot by this means be

¹ *Oratio pro P. Sulla*, cap. 28.

² *Dig.* lib. 48. tit. 18.

pressed out from them ; while in others there is such faintness of heart, that they will tell any kind of falsehood rather than undergo the torture ; and thus it often happens that the latter kind of persons will, from dread of pain, tell all manner of fables, not only falsely accusing themselves, but bringing other innocent persons into suspicion and danger." The commentators upon the Civil law in various countries have constantly spoken of it in similar terms ; and I am not aware of a single juridical writer of high character in any country who has mentioned it with approbation. As examples of the inefficiency of this instrument for the attainment of judicial truth, authentic instances are recorded, in great numbers, both in ancient and modern times, of false accusations and false confessions made under torture. Tacitus relates¹, that when Octavia, the wife of Nero, was falsely charged by a concubine of the tyrant with adultery, her female attendants were tortured, and that several of them, conquered by the severity of pain, assented to the falsehood, though most of them persisted in maintaining the chastity of their mistress. In the criminal tribunals of Germany, false confessions of crimes upon the application of torture often occurred. Heinecius mentions a remarkable instance of a German soldier charged with robbing his officer, who was tortured repeatedly in order to force him to discover what had become of the stolen property, and

¹ *Annal.* lib. xiv. 60.

who under torture accused himself and others of many crimes and even of murders which had never been committed¹. And shortly before the Revolution in 1793, the Parliament of Paris suspended two Judges from their office who had ordered the execution of a man for the alleged murder of a woman, proved only by his own confession under torture ;—the woman being discovered alive within two years after the execution of the supposed murderer.

By foreign jurists great merit is often ascribed to the Common law of England for the absence of torture in our criminal proceedings. Thus Grotius, writing at a period when the rack was still used in this country, cites England as an example “ that a people might live in safety under the laws without the use of torture².” In modern times German juridical writers have even devised ingenious reasons for the singular humanity of the English system in this respect³. And by all our own legal commentators and historians the practice is represented as totally repugnant to the fundamental principles of English law. Fortescue, who was successively Lord Chief Justice and Lord Chancellor of England in the reign of Henry VI., mentions, in terms of reprobation and horror, an instance of a false accu-

¹ Heineccii *Exercitatio de Religione Judicantium circa Reorum Confessiones*, sect. 34.

² Grotii *Epist.*, 693 [1636].

³ Mittermaier's *Deutsche Strafverfahren*, vol. i. p. 96.

sation made in his time by a criminal on the rack¹. But though he condemns the use of torture in the strongest language as inhuman and unjust, he does not attempt to deny that in his time the practice was common in England. Indeed, it is related by Holinshed and other chroniclers, that in 1468, not many years after Fortescue wrote, Sir Thomas Coke, Lord Mayor of London, was tried for High Treason, and convicted of misprision of treason, upon the single testimony of one Hawkins, elicited by torture; and that Hawkins himself was convicted of treason upon his own confession on the rack, and executed. It can hardly be doubted that at this period many other instances occurred, though the particular records of them have perished.

Sir Edward Coke, in the 3rd Institute, p. 35, after relating the traditional story that the rack was brought to the Tower by the Duke of Exeter in the reign of Henry VI., and was for that reason called "the Duke of Exeter's Daughter," proceeds as follows: "Sir John Fortescue, Chief Justice of England, wrote his Book in commendation of the lawes of England, and therein preferreth the same for the government of this countrey before the civill law; and particularly that *all tortures and torments of parties accused were directly against the common lawes of England*, and showed the inconvenience thereof by fearful example, to whom I refer you

¹ Fortescue, *De Laudibus Legum Angliæ*, cap. 22.

being worthy your reading. So as there is no law to warrant tortures in this land, nor can they be justified by any prescription, being so lately brought in." After alluding to the language of Virgil in describing the iniquity of Rhadamanthus,

"Castigatque, auditque dolos, subigitque fateri,"

he concludes the subject by declaring it to be "against Magna Carta, cap. 29. Nullus liber homo aliquo modo destruatur ; nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium parium suorum, aut per legem terræ. And accordingly all the said ancient authors are against any paine or torment to be put or inflicted on the prisoner before attainder, nor after attainder, but according to the judgement. And there is no one opinion in our books, or judicial record (that we have seen and remember), for the maintenance of tortures or torments." In the 4th Institute, p. 48, the same writer, in commenting upon the above words of Magna Charta, again asserts that they amount to an express prohibition of torture.

Sir Thomas Smith, one of the most enlightened men who adorned the reign of Queen Elizabeth, a statesman, a philosopher, and a lawyer, expresses a still more remarkable condemnation of torture¹. The passage, which is curious on many accounts, is as follows: "Torment or question, which is used by the order of the civile law and

¹ *Commonwealth of England*, Book II. cap. 27.

custome of other countries, to put a malefactor to excessive paine to make him confesse of himselfe, or of his fellowes or complices, is not used in England. It is taken for servile. For how can he serve the commonwealth after as a free man who hath his bodie so haled or tormented ? And if hee bee not found guilty, what amends can be made him ? And if he must dye, what crueltie is it so to torment him before ! The nature of Englishmen is to neglect death, to abide no torment ; and therefore hee will confesse rather to have done anything,—yea, to have killed his owne father, than to suffer torment. For death our nation doth not so much esteeme as a meere torment ; in no place shall you see malefactors goe more constantly, more assuredly, and with less lamentation to their death than in England. The nature of our nation is free, stout, haulty, prodigall of life and blood ; but contumely, beating, servitude, and servile torment and punishment, it will not abide.”

From these passages, Gentlemen, it seems quite clear that the use of torture in every shape was wholly disavowed by the most eminent writers on the Common law previously to the Commonwealth. It is condemned in the forcible language I have read to you by Fortescue, Coke, and Smith : by the first of these writers the practice is admitted to have been in existence in his time, though he expresses his reprobation of it ; by Lord Coke it is condemned upon principle in the most decided terms, and une-

quivocally declared by his high authority to be contrary to law ; while Sir Thomas Smith not only joins fully in denying its justice and legality, but boldly declares that it is “not used in England,” and takes great credit to the English law, in comparison with the Civil law and the customs of foreign nations, for its exclusion of this disgraceful badge of slavery.

I must not here omit to notice a judicial authority against the practice of torture as an instrument of the Common law, pronounced at a later period (though in the lifetime of Lord Coke), which if given in the manner and on the occasion reported, is of greater weight than even the opinions of the eminent writers I have mentioned. In the case of Felton, who stabbed the Duke of Buckingham in 1628, it is said that all the Judges of England, upon the question being formally proposed to them by the King, delivered an unanimous opinion against the legality of torture. The following is Rushworth’s account of the circumstances under which this opinion was given ; and I now read it at length, not so much because the story is interesting in itself, as because some of the facts, coupled with the language used by the Judges on this occasion, appear to me to point to a distinction between prerogative and law, to which I shall refer in the course of this Reading, as explaining the apparent contradiction between the daily practice of former times respecting torture, and the opinions of the oracles of the Common law upon the subject.

“ Afterwards,” says Rushworth¹, “ Felton was called before the Council, where he confessed much concerning his inducement to the murder. The council much pressed him to confess who set him on to do such a bloody act, and if the Puritans had no hand therein. He denied they had, and so he did to the last, that no person whatsoever knew anything of his intention or purpose to kill the Duke; that he revealed it to none living. Doctor Laud, bishop of London, being then at the council table, told him if he would not confess he must go to the rack. Felton replied, ‘ if it must be so, he could not tell whom he might nominate in the extremity of torture, and if what he should say then must go for truth, he could not tell whether his lordship (meaning the Bishop of London) or which of their lordships he might name, for torture might draw unexpected things from him.’ After this he was asked no more questions, but sent back to prison. The Council then fell into debate, whether by the law of the land they could justify the putting him to the rack. The King, being at the council, said, ‘ Before any such thing be done, let the advice of the Judges be had thereon whether it be legal or no :’ and afterwards His Majesty, on the 13th of November, 4 Car., propounded the question to Sir J. Richardson, Lord Chief Justice of the Common Pleas, to be propounded to all Justices, viz. ‘ Felton, now a pri-

¹ Rushworth’s *Collections*, vol. i. p. 638.

soner in the Tower, having confessed that he killed the Duke of Buckingham, and said he was induced to this partly for private displeasure, and partly by reason of a Remonstrance in Parliament, having also read some books which he said defended that it was lawful to kill an enemy to the republic; the question therefore is, whether by the law he might not be racked, and whether there were any law against it? for, said the King, if it might be done by law, *he would not use his prerogative in this point.* And having put this question to the Lord Chief Justice, the King commanded him to demand the resolutions of all the Judges. And on the 14th of November, all the Judges being assembled at Serjeants' Inn, in Fleet Street, agreed in one, that 'he ought not by the law to be tortured by the rack, for no such punishment is known or allowed by our law.' "

It must be obvious to you, Gentlemen, that this transaction is not related with the technical precision and accuracy of a legal report; and I shall hereafter have occasion to show that Rushworth is probably in some measure mistaken in his account of it; in the mean time it may be assumed (as has been assumed by Blackstone, Hawkins, and other writers,) that the opinion of the Judges in the case of Felton is an express decision against the lawfulness of torture.

Here then, Gentlemen, is a practice repugnant to reason, justice, and humanity—censured and con-

demned upon principle by philosophers and statesmen,—denounced by the most eminent authorities on municipal law,—and finally declared by the twelve Judges, not only to be illegal, but to be altogether unknown *as a punishment* to the law of England. As far as authority goes, therefore, the crimes of murder and robbery are not more distinctly forbidden by our criminal code than the application of the torture to witnesses or accused persons is condemned by the oracles of the Common law. And yet it is an historical fact, that anterior to the Commonwealth, torture was always used as a matter of course in all grave accusations, at the mere discretion of the King and the Privy Council, and uncontrolled by any law besides the prerogative of the Sovereign. With the strong language of the authorities I just now cited in your recollection, this may appear a startling proposition, and it is therefore proper that I should direct your attention in detail to the evidence by which it is supported, before I attempt to show you how this remarkable inconsistency between legal doctrine and legal practice may be reconciled.

In tracing the evidence of the use of torture in this country, I shall not attempt to carry the particular investigation further back than the sixteenth century. If it is shown that the practice existed in that comparatively civilized period, we can hardly entertain a doubt that it prevailed under the despots who filled the throne in the preceding ages of foreign

warfare or intestine tumult. But though it may be confidently assumed that the practice existed in those earlier times, there is a difficulty in authenticating particular instances ; because in such of the council books as are extant of a date previously to the reign of Edward VI. the torture warrants are not entered. As a sufficient reason for this omission, we may reasonably suppose, that before that time the orders for torture were more frequently issued either personally by the King, or by his great officers of state under his immediate direction ; and that the Privy Council had not yet systematically undertaken the direction of this branch of the prerogative. At all events, it was not the practice to record these warrants in the minutes of the Privy Council before the middle of the sixteenth century. You are not, however, to suppose that we have no express evidence that torture was used in more ancient times. One instance in the reign of Henry VI. I have already alluded to, as related by Holinshed ; many others are mentioned by chroniclers and historians as occurring during the fifteenth century ; and in the reign of Henry VIII. there is a recital in an Act of Parliament (27 Hen. VIII. c. 4,) that few offenders of a particular class would confess “ without pains or torture.” In the same reign, too, we find Sir William Skevington, a lieutenant of the Tower, immortalizing himself by the invention of a new engine of torture, called Skevington’s Irons,

or Skevington's Daughters, which was known and dreaded for a century afterwards under the corrupted name of the Scavenger's Daughter¹.

From the time of Henry VIII. the Council books afford the most unequivocal evidence of the practice of torture during the period to which they refer. Registers of the proceedings of the Privy Council during the reigns of Edward VI., Mary, Elizabeth, James I., and Charles I. are still in existence, with the exception of occasional intervals of a few years; and in these books there are numerous entries of warrants from the Council authorizing the applica-

¹ By the Commons' Journal (14th May, 1604,) it appears that at that time a committee was appointed by the House of Commons to inquire as to the state of a dungeon called "Little Ease" in the Tower. The committee reported that "they found in Little Ease in the Tower, an engine of torture, devised by Mr. Skevington, some time lieutenant of the Tower, called Skevington's Daughters; and that the place itself was very loathsome and unclean, and not used for a long time either for a prison or other cleanly purpose." The instrument called the Scavenger's Daughter is thus described by Tanner in his *History of the Jesuits*: "Præcipua torturæ post equuleum Angliæ species est, Filia Scavengeri dicta, priori omnino opposita. Cum enim ille membra, alligatis extractisque in diversa manuum pedumque articulis, ab invicem distrahat; hæc e contra illa violenter in unum veluti globum colligat et constipat. Trifariam hinc corpus complicatur, cruribus ad femora, femoribus ad ventrem appressis, atque ita arcibus ferreis duobus includitur, quorum extrema dum ad se invicem labore carnificum in circulum coguntur, corpus interim miseri inclusum informi compressione pene eliditur. Immane prorsus et dirius Equuleo cruciamentum; cujus immanitate corpus totum ita arctatur, ut aliis ex eo sanguis extremis manibus et pedibus exsudet, aliis ruptâ pectoris crate, copiosus e naribus faucibusque sanguis effundatur."—Tanner's *Societas Europæa*, p. 18.

tion of torture for the purpose of compelling the disclosure of political conspiracies and crimes of various descriptions. In order to establish the truth of the proposition, which I venture to make advisedly, respecting the constant use of torture in former times, I shall trace the history of this practice with some minuteness, by means of the Council books, during the reigns of Edward VI., Mary, and Elizabeth; and when these sources fail, in consequence of chasms in the registers, I shall be able to show from other authentic sources that it extended with little less frequency through the whole of the reigns of the two first Stuart sovereigns. I think the result of the inquiry must be a conviction, that until the Commonwealth torture was constantly used as an instrument of evidence in the investigation of offences, whether municipal or political, without scruple, and without question as to its legality. By the observation of a variety of instances spread over a considerable period, we may possibly be able to deduce some of the rules and principles by which the use of this obnoxious branch of the prerogative was regulated; and with this object I shall go through them in chronological order, endeavouring to trace, as I go along, the historical incidents from which they arose.

The first warrant¹ for the application of torture to be found in the Council books during the reign of

¹ See Appendix, No. 1.

Edward VI. is dated 5th November, 1551, and directs the Constable of the Tower, and "all other that from time to time shall have the ordering of the Tower and the prisoners there, to be assisting to certain commissioners for putting the prisoners, or any of them, to such tortures as they shall think expedient." The prisoners here alluded to were doubtless the several persons who had been committed to the Tower upon the charge of being concerned in the imputed treason of the Protector Somerset, and whose confessions or depositions formed the evidence against the duke upon his trial, which took place a short time afterwards¹.

The next warrant in the same reign, which is dated the 7th of January 1552-3, relates to a crime of a private nature, and directs the Lieutenant of the Tower to "cause two persons lately taken upon suspicion of a heinous murder to be put to the tortures²."

The earliest recorded instance of the use of torture in the reign of Queen Mary occurs in 1555, soon after her marriage with Philip of Spain; and it is remarkable that there is no evidence that torture was used towards any of the numerous persons concerned in Sir Thomas Wyatt's rebellion, which took place soon after Mary's accession to the throne. On the 9th of June, 1555, an entry is made in the Council

¹ King Edward's Journal, in Burnet's *History of the Reformation*, vol. ii. pp. 37—41.

² See Appendix, No. 2.

book of a letter to Lord North and other commissioners, and of another letter to the Lieutenant of the Tower, requiring them to “bring such obstinate persons as will not otherwise confess to the tortures, and there to order them according to their discretions¹.” I have not been able to discover the particular occasion to which this examination refers. Burnet, who notices it, says, “whether this pretended obstinacy was a concealing of heretics, or of the reporters of false news, does not appear².” The former is not improbable, as the persecution of heretics was at that time hotly promoted by the Queen and Council.

On the 4th of December, 1555, a letter³ is written by order of the Council to the Lieutenant of the Tower, directing him to “bring Richard Mulcaster, servant to Dr. Caius, vehemently suspect of robbing his master, to the rack, and to put him in fear of the torture if he would not confess.” Of the particular transaction to which this instance refers I can find no trace, either in the Council books or in the state papers, or in the histories of the period. A person named Richard Mulcaster was master of St. Paul’s School, a scholar of considerable eminence, and the author of several grammatical works in the reign of Elizabeth; but there is nothing but the similarity of name which can at all identify him

¹ See Appendix, No. 3.

² *History of the Reformation*, vol. iii. p. 243.

³ See Appendix No. 4.

as the individual here mentioned. Dr. Caius no doubt was the eminent and learned man who was for several years president of the College of Physicians, and founded the college at Cambridge which still bears his name. At the date of this entry he was physician to the Queen, and in great favour, and, as a member of the royal household, might be entitled to claim the assistance of the prerogative in discovering the circumstances of a robbery committed upon him.

The next instance¹ in this reign is dated a few days only after the last, namely, on the 11th of December, 1555, and is of a similar nature. It consists of an authority to the Lieutenant of the Tower, Serjeant Dyer (afterwards Chief Justice of the Court of Common Pleas), and the Solicitor-general, to examine a person "vehemently suspected" of robbery, and if they saw cause, to "bring him to the rack, and put him to some pain if he would not confess." On the same day a letter is issued to the same persons, to bring to the rack one Hugh of Warwick, who was suspected of horse-stealing. On the 16th of February, 1555-6, the Lieutenant of the Tower is authorized to join with Sir John Baker in examining two men, "and to put them upon the torture, and pain them according to their discretions if they would not confess their offences²." What these offences were does not appear; but Burnet, who mentions this instance, seems to refer it

¹ See Appendix, No. 5.

² See Appendix, No. 6.

to the proclamation against stage-plays'. In June following we find a warrant^a to the Lieutenant of the Tower and one of the Masters of the Requests, to "put to the tortures" Richard Gill, charged with having committed a murder in Dorsetshire; and on the 29th of July in the same year, 1556, Sir Roger Cholmely and Dr. Marten, one of the Masters of the Requests, are required^b to examine Silvester Taverner, on a charge of having embezzled the Queen's plate, and, "for the better attaining of the truth, to put him to such tortures as by their discretions should be thought convenient." A letter^c of the 19th of July, 1557, directs the Constable of the Tower and other persons "to examine such as Sir Edward Warner should inform them of, and to put them to the torture if they should think so good:" and another letter^d of the 13th of May, 1558, authorizes the Constable, together with Sir Roger Cholmely, Mr. Recorder of London, Mr. Doctor Marten, and Mr. Vaughan, to "bring one French to the torture, to put him in fear thereof, and also to put him to the pain of the same, if they should think so good."

Bishop Burnet, in his *History of the Reformation*, cites expressly from the Council books several of the above-mentioned instances of torture during the reign of Mary, referring to them as

¹ *History of the Reformation*, vol. iii. p. 256.

² See Appendix, No. 7.

³ See Appendix, No. 8.

⁴ See Appendix, No. 9.

⁵ See Appendix, No. 10.

proofs of the Roman Catholic persecutions of those days, and of a premeditated design on the part of the King and Queen to introduce the Spanish Inquisition into England. In one passage¹ he says, “The putting people not yet convict to the torture because they were thought obstinate and would not confess, and the leaving the degree of the torture to the *discretion* of those appointed for their examination, was a great step towards the most rigorous part of the proceedings of Inquisitors.” “Arbitrary torture,” he says in another passage, “and secret informers seem to be two great steps made to prepare the nation for an Inquisition².” The enumeration which I have made comprizes all the cases of torture mentioned by Burnet from the Council books as having occurred in Mary’s reign, and adds several of which he does not appear to have been aware. Among these recorded and authentic cases, I believe it cannot be proved that any one arose from the prosecution of heretics. In some instances it may be conjectured, from a comparison of dates and circumstances, that this was the case; but there is no direct or even probable proof of the fact; and, on the other hand, it is obvious from the entries themselves that the majority of them referred to murders, robberies, embezzlements, and other crimes wholly unconnected with the ordinances of religious bi-

¹ Vol. iii. p. 243.

² Vol. iii. p. 247.

gotry. Admitting, however, the truth of those tales of torture which have been enrolled and perpetuated in the annals of Catholic persecution upon the questionable authority Fox's Martyrology, it is hardly possible that Burnet, especially if he wrote with the Council books before him, could have been ignorant that the use of the rack was not peculiar to the reign of Mary. Yet the Protestant bishop, composing his History under strong party prejudices, is especially careful to throw these cases of torture into his enumeration of the enormities of a Catholic reign as so many examples of the wickedness of religious persecution, and is equally careful to cite not a single instance of the same kind of injustice from the Protestant reigns which preceded and followed it. I have already shown instances under the government of Edward VI.;—I now proceed to that of Elizabeth; and in the long catalogue of the cases of torture which occurred in the reign of a sovereign whom Protestant historians delight to honour, you will not fail to observe that many instances, and those sometimes the most prominent for refinement of cruelty, unquestionably and avowedly arose from Protestant persecution.

The earliest entry of a torture warrant in the Council books of Elizabeth occurs about four months after her accession to the throne, and consists of a letter¹ to the Lieutenant of the Tower, dated

¹ See Appendix, No. 11.

15th March, 1558-9, requiring him to send for the Knight Marshal to assist him in examining two men, named Pitt and Nicholls, accused of robbing a widow in London; and if the prisoners should persist in denying the fact, they are "to be brought to the rack, and to feel the smart thereof as the examiners by their discretions shall think good for the better *boulting* out the truth of the matter." In 1565 a letter¹ is written to Lord Scrope, directing him to "deal *somewhat sharply* with Nicholas Heath, to the end that he should declare why he wandereth abroad; and if he will not be plain, to use some kind of torture unto him, so it be without any great bodily hurt." In 1570, a man named Andrewes, "vehemently suspected of a very heinous murder in Somersetshire," is ordered to be brought to the Tower and offered the torture of the rack there². In the same year, John Felton, a Catholic enthusiast who had audaciously placarded a copy of the Bull of Pope Pius V. excommunicating the Queen, against the Bishop of London's palace, was charged with certain conferences with the Spanish Ambassador, which he denied. The commissioners appointed to examine into the transaction are directed³ by the Privy Council to deliver him to the Lieutenant of the Tower, "whereby he may be brought to the place of torture, and put in fear thereof; and if they shall perceive him

¹ See Appendix, No. 12.

² See Appendix, No. 13.

³ See Appendix, No. 14.

still to be obstinate, then to spare not to lay him upon it, to the end he may feel such smart and pains thereof as to their discretions shall be thought convenient."

In the following year, 1571, the treasonable conspiracy of the Duke of Norfolk respecting the Queen of Scots became the subject of inquiry. There is abundant evidence that torture was used on this occasion, the draft of a warrant¹ under the Queen's signet, in the hand-writing of Lord Burleigh, being still extant. It directs Sir Thomas Smith and Dr. Wilson, one of the Masters of the Requests, to examine Barker and Bannister, two of the Duke's servants, and if they should not confess plainly their knowledge, to cause them to be brought to the rack; and if they still refused to confess the truth, then to cause them to be put to the rack, and "to find the taste thereof until they should deal more plainly." Two days after the date of this warrant, Sir Thomas Smith, writing to Lord Burleigh respecting the examination of these persons, says, "To-morrow do we intend to bring a couple of them to the rack, not in any hope to get anything worthy that pain or fear, but because it is so earnestly commanded to us²;" and on the 20th of September he informs Burleigh that he had tried Bannister by the rack³.

¹ See Ellis's *Original Letters*, vol. ii. p. 260, (1st Series,) and Appendix, No. 15.

² Murdin's *State Papers*, p. 95.

³ *Ibid.*, p. 101.

Two circumstances are worthy of remark in this case. In the first place, the warrant proceeds directly and immediately from the Sovereign, without the intervention of the Privy Council; a mode of communicating the authority which was probably quite as much used as that of board-warrants, though the particular instances are not so carefully recorded. You are not therefore to conclude, Gentlemen, that all the cases of torture which have occurred are noted in the Council books. Secondly, one of the persons to whom this warrant is directed, and by whom it was executed, was Sir Thomas Smith, the same individual whose work I have cited, and who, not ten years before this period, had denied the existence of torture in England, and had given his testimony so forcibly and justly against the absurdity and injustice of the practice. This apparent inconsistency in the doctrine and conduct of lawyers upon this subject I shall hereafter endeavour to explain; in the meantime, it is due to the character of this humane and enlightened man to record his own expression of disgust at being employed on such a commission. In one of his letters to Lord Burleigh from the Tower he says, "I do most humbly crave my revocation from this unpleasant and painful toil. I assure you I would not wish to be one of Homer's gods, if I thought I should be Minos, Æacus, or Rhadamanthus; I had rather be one of the least shades in the Elysian Fields¹."

¹ Murdin's *State Papers*, p. 95.

We come now, Gentlemen, to a period of strong religious excitement, which continued, with occasional intermissions, to the end of Elizabeth's reign. The rigour of the executive government towards the Catholics during this period was not less remarkable than the severity of the penal laws which the Legislature from time to time enacted against them. Among other instruments of power which prerogative had placed at the disposal of the sovereign, the torture was one peculiarly applicable to the discovery of the real or supposed treasons of religious fanatics ; and accordingly, if we may draw our conclusions from the entries in the Council books, there is no period of our history at which this instrument was used more frequently and mercilessly than during the latter years of Elizabeth's reign. A Catholic layman, named Thomas Sherwood, a person of education, had been committed by the ecclesiastical commissioners for hearing a mass, and upon being examined, had confessed his belief in doctrines which were considered to imply that the Queen, being a heretic, had no title to the crown, and consequently to amount to high treason. On the 17th of November, 1577¹, the Attorney-general is directed to examine Sherwood for the purpose of drawing from him the names of other persons who entertained similar doctrines, and to ascertain from whom he had derived the arguments contained in his former confession ; and orders are given to the

¹ See Appendix, No. 16.

Lieutenant of the Tower to place the prisoner in the “dungeon among the rats,” if he does not answer willingly. This horrible dungeon is often mentioned by the Catholic annalists of Elizabeth’s persecution. It is described as a cell below high-water mark and totally dark ; and as the tide flowed, innumerable rats, which infest the muddy banks of the Thames, were driven through the orifices of the walls into the dungeon. The alarm excited by the irruption of these loathsome creatures in the dark was the least part of the torture which the unfortunate captives had to undergo ; instances are related which humanity would gladly believe to be the exaggerations of Catholic partisans, where the flesh has been torn from the arms and legs of prisoners during sleep by the well-known voracity of these animals. Sherwood’s courage and constancy overcame the horrors of this dungeon ; and, continuing his resolution, a warrant¹ was issued from the board, on the 4th December, 1577, authorizing the Lieutenant, the Attorney- and Solicitor-general, and the Recorder “to assay him at the rack.” This also appears to have failed, for he made no discoveries of importance, and in a few days afterwards the unfortunate man was sent into Somersetshire, where his offence had been committed, to be executed for high treason.

In the year immediately following, by a warrant²

¹ See Appendix, No. 17.

² See Appendix, No. 18.

dated 4th of November, 1578, which recited that a person named Harding could by no mild course be brought to confess the truth, the Lieutenant of the Tower and the Recorder of London are directed to bring him to the rack, "to prove whether he would discover any further matter;" and by the same warrant they are required to put John Sanford to the rack, and "by means thereof to *wrest* from him the truth of such things as he was suspected to be privy unto." I can find no trace in contemporary history of the transactions to which these instances refer.

The next instance in chronological order varies from the common form by omitting to prescribe specifically any of the usual modes of torture, but leaving the selection of the instrument to the discretion of the parties who are to execute the warrant, with a general limitation as to the extent of the pain and injury to be inflicted. This warrant¹ is dated the 9th of December, 1580, and after reciting that the house of Sir Drew Drury had been robbed "with the privity of one Humfrey, a boy dwelling in the house," who refused to discover his accomplices, it orders that by some "slight kind of torture, such as may not touch the loss of any limb, as by whipping, the knowledge of the persons and the manner of the robbery may be wrung from him."

On the 24th of December, 1580, a warrant² is

¹ See Appendix, No. 19.

² See Appendix, No. 20.

issued directing Harte, Bosgrave, and Pascall, described as “ persons lately arrested within the realm from Rome and other places beyond the seas, with intent to pervert and seduce Her Majesty’s subjects,” to be brought to the torture. All these persons were seminary priests: Pascall is said to have recanted, but Bosgrave and Harte were some time afterwards tried and executed with Campion¹; and therefore this case may no doubt be considered as an instance of torture respecting religious opinions.

The next recorded case is that of Thomas Myagh, an Irishman, who was brought over by the command of the Lord Deputy of Ireland to be examined respecting a treasonable correspondence with the rebels in arms in that country². The first warrant for the torture of this man was probably under the sign manual, as there is no entry of it in the Council register. The two reports made by the Lieutenant of the Tower and Dr. Hammond to Sir Francis Walsingham, respecting their execution of this warrant, are, however, to be seen at the State Paper Office. The first of these³, which is dated the 10th of March 1580–1, states that they had twice examined Myagh, but had forborne to put him in Skevington’s irons⁴, because they had been charged to examine him with secrecy, “ which in that sort

¹ Howell’s *State Trials*, vol. i. p. 1049.

² See his *Examinations in the State Paper Office*.

³ See Appendix, No. 21.

⁴ As to this instrument, see *ante*, p. 14 (note).

they could not do, that manner of dealing requiring the presence and aid of one of the jailors all the time that he should be in those irons," and also because they "found the man so resolute, as in their opinions little would be wrung out of him but by some sharper torture." The second report¹, which is dated the 17th of March, 1580, merely states that they had again examined Myagh, and could get nothing from him, "notwithstanding that they had made trial of him by the torture of Skevington's irons, and with so much sharpness as was in their judgment for the man and his cause convenient." How often Myagh was tortured does not appear; but Skevington's irons appear to have been too mild a torture, for on the 30th July, 1581, there is an entry in the Council books of an authority² to the Lieutenant of the Tower and Thomas Norton "to deal with him with the rack in such sort as they should see cause." The following rude lines cut by this poor Irishman on the wall of his dungeon are still to be seen, among other memorials of misery, in the Tower of London :

" Thomas Miagh, which liethe here alone,
That fayne wold from hens begon ;
By torture straunge mi trouth was tryed,
Yet of my libertie denied.

1581. THOMAS MYAGH."

About this period, Gentlemen, the zeal and activity of the Jesuits and seminary priests, who came

¹ See Appendix, No. 22.

² See Appendix, No. 23.

into England in great numbers, excited much anxiety on the part of the Protestant Government. Accordingly, we find that such priests as were arrested from time to time, upon real or pretended accusations, were examined with the utmost rigour, and constantly subjected to the torture. A well-known instance of the torture of a seminary priest was that of Alexander Briant. The warrant¹ is dated the 3rd of May, 1581, and is directed to the Lieutenant of the Tower, Doctor Hammond, and Thomas Norton: after reciting that “there hath been of late apprehended, among others, a certain seminary priest or Jesuit naming himself Briant, about whom there was taken divers books and writings carrying matter of high treason, and is (as may by good likelihood be conjectured,) able to disclose matters of good moment for Her Majesty’s service,” the instrument directs them to examine him upon interrogatories framed upon the books and writings found; and if he refuses to confess, to offer him the torture in the Tower; and if, upon the sight thereof, he shall obstinately refuse to confess the truth, then to put him to the torture.” In addition to the ordinary torture, Briant, who was a person of good education, is said by Anthony Wood to have been “specially punished for two whole days and nights by famine, by which he was reduced to such extremities that he ate the clay out of the walls of his prison, and drank the droppings of the roof.”

¹ See Appendix, No. 24.

² *Ath. Oxon.*, vol. i. p. 210.

The torture by famine in this particular case is admitted as a fact in a paper attributed to Lord Burleigh, and published in Somers's Tracts¹; and it is there justified, on the ground that the prisoner had refused to write when required to do so by the persons who examined him; upon which he was told that he should have no food until he had written to the Lieutenant for that purpose.

An instance of what I may call *irregular* torture occurs about this time in a warrant² to the Bishop of Chester, dated 22nd of June, 1581, directing him to cause a young maiden, who had "put into writing certain feigned visions, and scattered them abroad among the popish and ignorant people in his diocese," to be secretly whipped, and so brought to declare the authors of the imposture.

We now come to the case of Campion the Jesuit, which, on account of the high reputation of the individual among those of his own communion, is the constant theme of Catholic historians. Campion was apprehended in Berkshire, with three other priests, in July 1581, and on the 30th of that month there is a warrant³ to the Lieutenant of the Tower, Doctor Hammond, and two of the clerks of the Council, to examine him, and "in case he continues wilfully to deny the truth, to deal with him by the rack." They are also required by the same warrant to examine two other priests not named, and "if

¹ Vol. i. 209.

² See Appendix, No. 25.

³ See Appendix, No. 26.

they find them to halt, then to put them in fear of the torture." On the 14th of August following there is another warrant¹ for the examination of Campion, and two other priests named Peters and Forde, as to what masses they had said, whom they had confessed, and where Parsons and the other seminary priests were, and to put them in fear of the torture if they refused to answer directly. In the same warrant is contained a direction to "proceed to the torture with a priest named Paine, and to examine him thereupon." On the 29th of October, 1581, a few days before Campion's trial, there is an authority² from the Council to examine him, and also Ford and other prisoners, and to put them to the rack. In the paper published in Somers's Tracts, which I have already referred to as written by Lord Burleigh in justification of the severities at this time practised by the Government against the Catholics, it is said, by way of palliation respecting the use of the rack, that "Campion the Jesuit was never so racked, but that he was presently able to walk and write, and that there was perpetual care had, and the Queen's servants, the warders, whose office and act it was to handle the rack³,

¹ See Appendix, No. 27.

² See Appendix, No. 28.

³ Tanner, the Jesuit historian already mentioned, in relating the sufferings of Campion gives the following description of the rack: "Est autem hæc equulei carnificina. Trabes quatuor, in quadrum compaginatæ, humi extenduntur. Extremis quadrati duobus, quæ caput et pedes rei protenduntur, insertum est hinc inde ferreis anulis versatile lignum, complurium funium spiris et voluminibus im-

ever, by those that attended the examinations, specially charged to use it in as *charitable* manner as such a thing might be." Well might the editor observe, "This tender mercy sounds very cruel!" Father More, too, in his History of the Jesuits, denies the fact of the forbearance of Campion's torturers, and says, that when called upon to hold up his hand at his arraignment, according to the usual form, the joints and muscles of his arm were so injured by the rack that he was wholly incapable of doing so, and that one of the priests who stood near him raised it for him¹.

A warrant² dated the 29th of April, 1582, directs the Lieutenant of the Tower, and other persons named, to examine Thomas Alfield, a seminary priest, "who, it was suggested, was able to discover many matters touching the practices and proceedings of Jesuits and seminary priests within the

plexum, quale attrahendis ponderibus aut situlis in fonte, adhibetur. In vacuo harum quatuor trabium distentus reus, ligandas manus ad lignum superius, et pedes ad alterum inferius, porrigit. Ligantur autem vel quatuor funibus manuum pedumque soli pollices infra ultimum articulum; vel distinctis quinque fidiculis singuli pedum manuumque digiti; sic ut jaceat torquendus divaricatis cruribus et manibus. Interim duo a capite, a pedibus totidum carnifices, lignis illis magnâ vi versatis, miserum corpus, attractis funibus seu fidiculis, e pollicibus aut digitis a terrâ suspendunt, et omnes in eo laxant ossium commissuras, cum immenso dolore, ex continuâ nervorum convulsione, viscerumque interdum laceratione. Quo fit, ut nonnunquam plus palmo supra nativam ex violentissimâ attractione, ut Campiano factum est, excrescat corpus staturam."—Tanner's *Societas Europæa*, p. 12.

¹ *Histor. Societatis Jesu*, p. 89. ² See Appendix, No. 29.

realm ;” and if he should not willingly discover such matters, the Commissioners were charged “to put him to the rack, and by torture thereof draw from him such things as he should be able to say.”

On the 17th of April, 1586, there is a warrant¹ authorizing the Lieutenant of the Tower and others to “put unto the torture of the rack one William Wakeman, alias Oavys, a notorious felon, and thereby to make him to confess such misdemeanors and robberies as he is to be charged withal, and is privy unto of others.” And on the 13th of May following there is a warrant to examine by torture the same man and two others, named Beaumont and Pudsey, for the discovery of certain felonies.

On the 23rd of December, 1586, the Lieutenant of the Tower and several other persons, among whom are the Attorney-general (Popham) and the Solicitor-general (Egerton), are required² to examine ten persons, whose names are given in a schedule, upon a charge of treason, and “to put them to the torture of the rack in such sort as to their discretions and due considerations should seem convenient.” The particular transaction to which this wholesale examination refers is unknown to me ; but as the names of several Catholic priests and some other adherents of the Queen of Scots appear in the schedule, and as the date of this warrant falls in the interval between her trial and execution,

¹ See Appendix, No. 30.

² See Appendix, No. 31.

it is highly probable that the treasons of which they were accused were connected with the intrigues of Mary and the Babington Conspiracy.

On the 24th of April, 1587, there is a letter¹ to the Lieutenant of the Tower and others, which informs them that one Andreas Van Metter “ stood charged with certain matter concerning Her Majesty’s State and person, which he did obstinately refuse to confess ;” and goes on to require them, if he should still persist in his obstinacy, “ to use the *accustomed* torture of the rack, as oftentimes as they should see cause, to force him to confess what might be had out of him touching the said matters.” It appears from one of the periodical reports made by the Lieutenant of the Tower to the Lords of the Council respecting the prisoners in his custody, dated in May, 1588, that “ Andrew Van Metier, a Dutchman, was imprisoned on suspicion of having been sent over to kill the Queen’s Majesty².” The particulars of this supposed treason do not appear in the histories of that time, nor in any contemporary documents to which I have been able to refer.

There is a warrant³ dated 7th of January, 1587-8, authorizing the Lieutenant of the Tower and two clerks of the Council, to examine “ certain lewd persons, who were to be charged with disobedience, misbehaviour, and practices against the State

¹ See Appendix, No. 32.

² State Paper Office.

³ See Appendix, No. 33.

and Government, and especially John Staughton and Humfrey Fulwood ; and if they should show themselves obstinate and perverse, to carry them to the Tower, there to be put to the rack and torture.”

The next instance that occurs in the Council books is a warrant¹ dated 25th of October, 1591, directing Dr. Fletcher, Richard Topcliffe (the well-known instrument of Government for the discovery of recusants), and two other persons, “ very straightly ” to examine Eustace White, a seminary priest, and one Brian Lassy, “ a distributor of letters to Papists,” and if they refuse to answer directly, to put them to the *manacles*² and such other tortures as are used in Bridewell.” Two days after this, on the 29th of October, 1591, there is a warrant³ to

¹ See Appendix, No. 34.

² This is the first occasion on which this instrument occurs, but from this time it was by far the most usual kind of torture. It seems to have been kept at Bridewell until about the year 1598, after which time it is mentioned in warrants as one of the kinds of torture used at the Tower. I cannot discover from any credible authority of what it consisted. It is, perhaps, worthy of remark, that at the present day a variety of instruments of torture are shown in the Tower, and visitors are assured that they were taken in the Spanish Armada in 1588,—the precise period at which the manacles were introduced at Bridewell. One of these engines now at the Tower, which compressed the neck of the sufferer down towards his feet, might be the manacles ; and if so, Shakespeare probably alludes to it when he makes Prospero say in the *Tempest*,

“ he is a traitor !

I'll *manacle* thy neck and feet together.”

³ See Appendix, No. 35.

the Attorney- and Solicitor-General (Popham and Egerton) to examine Thomas Clynton, a prisoner in the Fleet; and” if he does not deal plainly in his answers, to remove him to Bridewell, “there to be put to the manacles and such torture as is there used.” On the 4th of June, 1592, there is a warrant¹ to put Owen Edmondess, an Irishman, to the torture in Bridewell; and on the 8th of February following, three persons, named Unstone, Bagshawe, and Ashe², are ordered to be removed from the Gatehouse and Newgate to Bridewell, and there, in case of need, “to be *punished* with the torture.” This latter instance was probably connected with the discovery and prosecution of Catholic priests; for it appears from a previous entry in the Council books that Bagshawe was the servant of one Bell, a seminary priest, and had been arrested a few days before in Derbyshire.

The next instance of which I find a notice in the Council books, relates to one of those tumultuous risings to drive away foreign traders, or, as it is technically called by Lord Coke, to “expulse strangers,” which had been frequent from very early times in London. The warrant³, which is dated the 16th of April, 1593, is directed to the Lord Mayor of London, and requires him to examine an apprentice whom he had apprehended as the suspected

¹ See Appendix, No. 36.

² See Appendix, No. 37.

³ See Appendix, No. 38.

writer of "a lewd and vile ticket or placard set up upon some post in London, purporting some determination and intention the apprentices should have to attempt violence on the Strangers;" and if the Lord Mayor should find "pregnant matter to argue him to be guilty of the writing of the said placard, and yet he will not by fair means be brought to utter his knowledge, that he should be punished with torture used in the like cases, and so compelled to reveal it." There is also a warrant¹ dated the 11th of May, 1593, which appears to relate to the turbulent conduct of the apprentices of London on the same occasion of discontent. It recites that "there have been of late divers lewd and mutinous libels set up within the city of London, among the which there is one set up upon the wall of the Dutch churchyard that doth exceed the rest in lewdness;" it then directs the persons to whom it is addressed to search for the authors of these libels, to apprehend and examine suspected persons, and to put them to the torture in Bridewell, "to be used at such times and as often as they shall think fit."

On the 12th of November, 1595, there is a warrant² to Sir Thomas Fleming, the Solicitor-general, and one of the Clerks of the Council, reciting that one Gabriel Colford, "that brought certain seditious books from beyond the seas into the realm, being a

¹ See Appendix, No. 39.

² See Appendix, No. 40.

most lewd person, and employed for the fugitives beyond the seas in messages hither into the realm, and also a tailor dwelling in Fleet Street, called Thomas Foulkes, in whose house Colford did lodge," had been lately apprehended; and that both of them had refused to reveal what they knew concerning Her Majesty and the State: the warrant therefore requires that both these persons should be put to the torture of the manacles in Bridewell. By a subsequent entry in the Council books it is recited as a fact, that Colford had been examined and put to the torture under the above warrant.

On the 25th of January, 1595-6, a letter¹ is sent to Sir Thomas Wilkes and Mr. Wade, authorizing them to examine very secretly one John Hardie, a Frenchman, who had been taken with suspicious letters sewed up in his doublet, the meaning of which he had refused to disclose; and if he still refused, they were to try him by the "ordinary torture in Bridewell, and by the pain and terror thereof to draw him to confess."

On the last day of February, 1595-6, a letter² is sent to Sir Richard Martin, thanking him for the extraordinary pains he had taken in apprehending and examining Humphry Hodges, and authorizing him, as Hodges had not yet discovered "what was become of the hundred pounds hid in the ground, to put him to the manacles, thereby constraining

¹ See Appendix, No. 41.

² See Appendix, No. 42.

him to deliver the whole truth." By another entry in the Council books it appears that Hodges had stolen and secreted goods and money "belonging to Sir Henry Bagnall, Knight, attendant about Her Majesty's service."

On the 21st of November, 1596, there is a letter¹ to the Recorder of London, Mr. Topcliffe and Mr. Skevington, which recites that "certain lewd persons, to the number of 80, gathered together, calling themselves Egyptians, and wanderers through divers counties of the realm," had been lately apprehended in Northamptonshire, and that some of them had been brought to London and committed to prison; and it then directs that they should be put to the manacles in Bridewell, "whereby they might be constrained to utter the truth in those matters concerning their lewd behaviour that should be fit to be demanded of them."

The next instance of torture recorded in the Council books occurs in the case of Bradshaw and Burton. The names of these persons, Gentlemen, have become celebrated in the history of the law of constructive treason, the resolution of the Judges previously to their trial having formed one of the principal authorities for the questionable doctrine, that where a tumultuous assembly intends the forcible destruction of the whole of any particular class of grievances—as, for instance, the pulling down

¹ See Appendix, No. 43.

all the inclosures of the realm, or demolishing *all* churches,—the universality of the design increases the quality of the crime from a mere riot to high treason¹. Two persons named Bradshaw and one Burton, together with several hundred discontented persons of the lower orders, had assembled in Oxfordshire with the intention of forcibly destroying the numerous inclosures recently made by the proprietors of lands in the midland counties, and by which much popular discontent had been occasioned. This riotous assembly having been with some difficulty suppressed by the local magistrates, four of the ringleaders were sent to London by the direction of the Privy Council, and confined in several prisons. On the 19th of December, 1596, a warrant² is issued from the Board directed to the Attorney-general (Sir Edward Coke), the Solicitor-general (Sir Thomas Fleming), Mr. Francis Bacon, and the Recorder of London, authorizing them to examine these four rioters “upon such articles as they should think meet; and for the better boulding forth of the truth of their intended plots and purposes, that they should be removed to Bridewell and put to the manacles and torture.”

On the 2nd of February, 1596-7, a warrant³ is issued to Sir Edward Coke, Sir Thomas Fleming, Mr. Francis Bacon, and one of the clerks of the Coun-

¹ The resolution of the Judges in this case is reported in Popham's Reports, p. 122., and Anderson's Reports, vol. ii. p. 66.

² See Appendix, No. 44.

³ See Appendix, No. 45.

cil, directing them to put to the manacles or torture of the rack one William Tompson, "charged to have a purpose to burn Her Majesty's ships, or to do some notable villainy," in order to force him to declare the truth.

On the 1st of December, 1597, a warrant¹ issues to seven persons, authorizing them, or any two of them, to put to the torture of the manacles one Thomas Travers, "charged with stealing a standish of Her Majesty," if he would not declare the truth.

A few days after the date of the last instance, a case of torture occurred founded upon a remarkable transaction. An old gentleman, named Richard Aunger, a Double Reader of Gray's Inn, had been missing for several weeks, and at last his corpse was found floating in the Thames. On being examined by surgeons, the body exhibited unequivocal marks of violence, which led to a suspicion that the deceased had been strangled or otherwise murdered, and then thrown into the water. Witnesses were called, and after a long inquiry, strong presumptions appeared against the son of the old gentleman, and one of the porters of Gray's Inn, but no sufficient evidence could be obtained to convict them of the murder. In this state of things application was made to the Privy Council, and a warrant² was granted, dated 17th of December, 1597, directed to the Recorder of London and four other

¹ See Appendix, No. 46.

² See Appendix, No. 47.

persons, reciting the circumstances which raised a suspicion against "Richard Aunger, the son, and Edward Ingram, porter of Gray's Inn, to be the committers of that foul murder," and concluding that, "forasmuch as the fact was so horrible, that an ancient gentleman should be murdered in his chamber, it was thought meet that these two persons should be examined, and if they would not confess the truth, that they should be put to the manacles in Bridewell."

On the 4th of January, 1598-9, there is a warrant¹ to the Lieutenant of the Tower and Richard Topcliffe to "take order for the straight examination" of two persons, named Richard Denton and Peter Cooper, who were supposed to be privy to some dangerous design against Her Majesty and the State, "using such means of torture by the manacles as they should find needful to make them particularize the truth."

I have now, Gentlemen, completed the enumeration of the recorded instances of torture during the reign of Elizabeth. A diligent search in various depositories of manuscripts, and, in particular, at the State Paper Office, would probably furnish the means of enlarging the catalogue. As it is, it is unquestionably proved by the cases I have laid before you, that the practice existed, without any material intermission, during the whole of the long reign

¹ See Appendix, No. 48.

of the last of the Tudors. I shall now proceed to show you that it continued through the reigns of the two first Stuarts.

The Council books for the first twelve years of the reign of James the First are unfortunately missing ; and for that period, therefore, I must draw the evidence of the continuance of the practice from other sources. Two original warrants from the Privy Council for applying the torture to one Philip May, dated the 19th and 20th of April, 1603, before the King's arrival in London on his accession to the throne, are to be found at the State Paper Office. The first of these¹ is directed to Lord Chief Justice Popham, the Attorney-general, Sir Edward Coke, and the Solicitor-general, Sir Thomas Fleming, and authorizes them to put the prisoner "to the torture of the rack." I think there is reason to believe that this warrant was never actually executed ; it is an informal instrument, and on that account, as well as on account of its being addressed to one of the Common Law Judges, which, for reasons which I shall presently explain, was unusual and irregular in the practice of torture, another warrant², more formally penned and omitting the name of the Lord Chief Justice, was issued on the following day, authorizing the persons to whom it was directed, to put the prisoner "to the manacles, or such other torture as is used

¹. See Appendix, No. 49.

² See Appendix, No. 50.

in the Tower." The whole of the examinations against May are in the State Paper Office, and therefore the transaction out of which this instance of torture arose, can be readily ascertained. He was a servant of Lord Hundsdon, the Lord Chamberlain, and was accused of insolent and treasonable speeches against the person and title of the new King, which, at that precise conjuncture, was an offence of serious magnitude. He appears to have been repeatedly examined by the Chief Justice on the 19th of April, without being brought to admit the particulars of a conversation which had been freely admitted by another examinee. On the 20th of April, the date of the second warrant, he is examined again, and after much hesitation admits a part of the words imputed to him; and then, "upon better consideration," which is the term used in the examination, he confesses the full charge; the material part of which was, that, in an idle conversation with one Prickett, he had declared, that "if the King were not a Papist, he would not live five years, nor five months, nor five weeks; for there were some in his bosom that would cut his throat;" and that a servant of Lord Scrope's had told him that "the King was wise and gracious, but that no one knew of what religion he was." The circumstances that this examination bears date the same day as the warrant,—that it is executed and signed by the same persons to whom the warrant is directed, and that the

whole of it is in the hand-writing of the Attorney-general, furnish convincing evidence that this was one of those instances in which Sir Edward Coke personally conducted an examination by torture.

In the grand conspiracy of the early part of the reign of James I., the Gunpowder Plot, the only direct evidence of the application of torture, is the well-known warrant in the King's hand-writing authorizing the commissioners to examine Fawkes upon the rack, "using the gentler tortures first, *et sic per gradus ad ima tenditur.*" It cannot, however, be reasonably doubted, that with respect to a conspiracy of such alarming magnitude, the rack was used to overcome the stubborn resolution of others who refused to name their confederates in this atrocious scheme.

Dr. Robert Abbott, a clergyman of great eminence, brother to the Archbishop of Canterbury, one of King James's chaplains, and afterwards Bishop of Salisbury, who wrote a most ingenious and convincing tract respecting Father Garnet's connexion with this plot, describes it as being in his time the common course with commissioners appointed to examine into offences of State, to make use of torture. His words are, "Speciales delegati confessiones scelerum vel interrogatis eliciunt, vel argumentis et testimoniis evincunt, vel ubi opus est tormentis exprimunt¹." The same writer even la-

¹ Abbott's *Antilogia*, cap. i.

ments that the timidity and false humanity of the King should have interfered to prevent Garnet from being examined upon the rack, and says that without doubt if that had been done, agreeably to the practice of foreign countries and the common course here, the fact of his criminal privity to the plot might have been obtained from his own mouth. Under these circumstances, and considering that it was the daily practice of the times, it would be unreasonable to suppose that the torture was not used "to press out" from Fawkes and other gunpowder conspirators the confession of the names of their accomplices, after they had avowed their own share in an atrocious attempt upon the life of the King and some hundreds of the most important men in the State, and had declared that there were others implicated, whose names they refused to discover.

Catholic writers have constantly asserted that many of the witnesses by whom Father Garnet was charged with the guilt of the Gunpowder Plot, were examined under torture. In particular, they assert that Nicholas Owen, who certainly died in the Tower within a few days after his apprehension, expired in the endurance of some dreadful species of torture. It must be confessed that the actual circumstances of the death of this unfortunate man, as related in detail by Dr. Abbott in the work above cited, fully justified the suspicions expressed by Catholics. Owen had been the confidential servant of Garnet for several years ; and as it was clearly

proved to the Government that Garnet had been privy to previous treasons, important disclosures were expected from this man. Soon after his apprehension he was examined in the Tower, and positively denied that he knew, or had ever seen or heard of Garnet, and alike defying remonstrances and threats, pertinaciously adhered to this obvious and stupid falsehood. A few days afterwards, he was again examined, and on his showing a disposition to adopt the same course of denial, one of the "gentler tortures" referred to by James, was first applied by tying his thumbs together and suspending him by them to a beam, while the questions were repeated to him. He then admitted his knowledge of Garnet, and his attendance upon him as a servant; but he still disclosed no matters of any importance, and was therefore given to understand that when the commissioners came to the Tower on the following day, he must expect the severer discipline of the rack. The next day, he complained of illness to his keeper, who humanely carried him a chair to use at his dinner, and with his food a blunt-pointed knife was as usual brought for the purpose of cutting his meat. Owen pretended to find fault with the coldness of his broth, and besought the keeper to put it on the fire for him in an adjoining apartment; and as soon as the man had left the cell for this purpose, he seized the opportunity of ripping up his belly in a frightful manner with the knife. The keeper on his re-

turn, observing the pale and ghastly countenance of the prisoner, and perceiving blood sprinkled on the floor, threw off the straw which the unfortunate man had drawn over him, and discovered what had happened. He then ran to inform the Lieutenant, who immediately hastened to the cell with several guests who happened to be at dinner with him. In answer to their questions, the dying man declared that he had committed the act of self-destruction entirely from the apprehension of severer torture than he had suffered the day before. He expired soon afterwards, and an inquest being held upon his body in the Tower, a verdict of *Felo-de-se* was returned. The above statement is circumstantially made by Dr. Abbott, in the book respecting Father Garnet, which I have already mentioned¹, in refutation of what he calls the "calumnies of the Jesuits" as to the mode of Owen's death. You will probably think with me, Gentlemen, that there is no great difference in reason or morality between the guilt of homicide by actual torture, and that of driving a man to self-destruction by the threat of bodily agony from which the sufferer sees no refuge but in death.

There are several notorious instances of torture in the subsequent part of the reign of James I. In 1614 Edmund Peacham, whose case has become celebrated in consequence of Sir Edward Coke's

¹ *Antilogia*, p. 114.

dispute with the King and Bacon respecting extrajudicial questions to the Judges, was accused of high treason for reflecting upon the royal prerogative in a sermon written by him and found in his study, but never preached or published. On the 18th of January, 1614-5, a warrant¹ is issued by the Privy Council to Sir Ralph Winwood, Secretary of State, Sir Julius Cæsar, Master of the Rolls, the Lieutenant of the Tower, the King's Serjeants, and one of the clerks of the Council, which, after reciting "that Peacham stood charged with writing a treasonable book or pamphlet, and that it concerned the King to discover many things respecting that book and the author, wherein Peacham had not dealt clearly, directs them to examine him strictly, and if they found him obstinate and perverse, to put him to the manacles as in their discretion they should see occasion." In returning the examinations taken under this warrant, Sir Ralph Winwood informs the Council that Peacham had been examined upon the interrogatories exhibited to him, "before torture, in torture, and after torture²."

On the 19th of February, 1619-20, a warrant³, signed, among other members of the Council, by Lord Chancellor Bacon and Sir Edward Coke, is directed to the Lieutenant of the Tower, Sir Henry Montague, Lord Chief Justice, and Sir Thomas

¹ See Appendix, No. 51.

² Bacon's *Works*, vol. iii. p. 259, edit. 1765.

³ See Appendix, No. 52; and *Archæologia*, vol. x. p. 143.

Coventry, Solicitor-general, requiring them, or any two of them, to examine one Samuel Peacock, committed to the Tower upon vehement suspicion of high treason, and "to put him, as there shall be cause for the better manifestation of the truth, to the torture either of the manacles or the rack." In one of Bacon's letters to the King¹, he recommends the use of torture on this occasion; "If," says he, "we cannot get to the bottom otherwise, it is fit Peacock be put to the torture; he deserveth it as well as Peacham did." It is remarkable that this warrant, and the first of those issued in the case of Philip May, are the only two recorded instances in which an authority to apply torture is directed to a common-law Judge. I have already observed that in the case of May, there is reason to believe that the particular warrant so directed was not executed; and I have not been able to discover any evidence of the actual application of torture in the case of Peacock.

On the 9th of January, 1621-2, a warrant² is directed to Mr. Serjeant Crewe and the Attorney-general, to examine James Crasfield, a prisoner in the Tower, "for causes known unto them; and if there shall be cause, not only to offer him the manacles and rack, but to use the same as in their discretion they shall find requisite."

From these authentic instances, Gentlemen, it

¹ Bacon's *Works*, vol. iii. p. 576.

² See Appendix, No. 53.

scarcely admits of doubt that the practice of torture was continued during the whole of the reign of James I. It appears, however, at this time to have been usually applied on occasion of State offences; and, indeed, I have not been able to ascertain any instances of its application to other crimes since the reign of Elizabeth. I shall now proceed to show you that Charles I. was not more abstemious than his predecessors in the exercise of this obnoxious prerogative.

The earliest instance of torture in the reign of Charles I. occurs in the case of William Monke, which is particularly curious as showing the severity of the bodily injury sometimes produced by the rack, and also the summary authority assumed by the Privy Council in awarding compensation to a party injured from the property of a false accuser. The warrant¹ is dated the 30th of April, 1626, and is directed to the Lieutenant of the Tower, Mr. Serjeant Ashley, and two of the clerks of the Council, authorizing them to examine him, and “to use the manacles to him if in their discretions they should think it fit.” The particulars of this man’s offence do not distinctly appear; but in the course of the following year the Council register² records a petition from him to the Lords of the Council to the following effect: It states “that he, by the malicious practice and accusation,

¹ See Appendix, No. 54.

² *Council Book*, February 27, 1627.

tending to high treason, of one John Blackburne and his wife, had been imprisoned in the Tower of London, and there tortured upon the rack, and had been thereby utterly disabled to maintain himself, his wife and nine children depending upon his labours ;—that the same being discovered, the Petitioner had been set at liberty, and a warrant granted from the Board for the apprehending of the said accusers, who, out of a conscience of their own guilt, were fled and could not be found ;—that the said accuser, John Blackburne, was possessed of lands and other profits, out of which the Petitioner humbly sought to be relieved.” Upon this petition, the Lords of the Council, “ in consideration of the Petitioner’s sufferings and distressed estate, and to the end that he might have some means and relief assigned to him out of the said Blackburne’s estate,” direct an inquiry to be made as to the situation and extent of the property alleged to belong to him, and then assign a part of it to the Petitioner by way of compensation.

In the course of the year 1627 an occurrence took place which deserves to be mentioned, not only as showing an express recognition of the practice of torture in Ireland at this period, but as a proof of the despotic doctrines which were at that time entertained by Charles and his Council. Several treasonable conspiracies in Ireland, supposed to have been countenanced by Roman Catholic priests, were in the early part of this reign the

subject of much alarm to the Government. On the 29th of April, 1627, the Secretary for Ireland, in the name of Lord Falkland, the Lord Deputy, writes thus to Mr. Secretary Conway, then Viscount Killultagh¹: “The papers sent herewith out of the county of Fermanagh confirms all; the priest Glasney O’Cullenan, mentioned in them to be the busy instrument of preparation of affections and expectations in those parts of the North, is brought safe to Dublin Castle, and the Lord Deputy hopes to have more of them, God having hitherto so blessed his attempts in that kind, that they have seldom failed. Many are startled at this man’s apprehension. The Lord Deputy purposeth instantly to examine him; but having but one witness against him, though a priest as well as himself, if he should stiffly deny the accusation, his Lordship doubts whether he should rack the traitor, because he finds him in the person of a priest, without warrant from England; without which, the malice and scandal he should undergo would be insupportable; but under that protection and assurance of countenance and fair interpretation of his actions, *he dare do anything.*”

In satisfaction of the doubts contained in this letter, Lord Killultagh, on the 30th of May, 1627, returns the following remarkable answer: “Touching the point of offering or putting to the rack the

¹ This Letter and the Answer to it are in the State Paper Office.

priest, His Majesty was of opinion, and commanded me to deliver it so to you, that in this and all cases which reach to that high degree of treason and treasonable matter, you might with boldness and without shadow of doubt, execute the uttermost of the law, not only for putting to the rack, *but even to take away that man's life*, or as many others as shall be found guilty of treason of like high nature. When I had received His Majesty's pleasure, remembering your Lordship's directions to have the Council also acquainted with your letters, I moved His Majesty that I might assemble the Committee for the Irish Business, whose names are here inclosed in a paper. And there met of them Lord President, Lord Steward, Lord Carleton, Mr. Secretary Coke, Mr. Chancellor of the Exchequer, and myself. Your Lordship's letters were read, and great estimation was made of your Lordship's wisdom and dexterity; and to the point of racking the priest upon those reasons you declare, they delivered their judgments frankly, *that you ought to rack him if you saw cause, and hang him if you found reason*. And they commanded me to deliver that opinion of theirs to His Majesty, which I humbly and faithfully did, and give your Lordship this advertisement in answer of yours, as the opinion of the Council, and judgment and pleasure of His Majesty."

It can hardly be conceived, Gentlemen, that the King and his Council seriously intended by this

extraordinary communication to convey to the Lord Deputy of Ireland an authority to take away life by mere prerogative as well as to torture,—to empower him, *sine strepitu judicii*,—without arraignment or trial of any kind, to execute the unhappy persons who had fallen into his hands ;—though the words are perhaps capable of that construction. At all events, admitting that this is not the serious meaning of the words, it is shocking to humanity to read the careless and almost sportive language with which, in an age of comparative refinement, the royal voice enjoins its representative to inflict the agonies of torture upon a captive.

We now approach the termination of this melancholy catalogue. The last instance of torture in England, of which I can find any trace, occurred in the year 1640. On the 21st of May in that year, a warrant¹ was given under the King's signet, addressed to the Lieutenant of the Tower, authorizing him to take John Archer to the rack, and directing him, together with the King's Serjeants Heath and Whitfield, to examine the prisoner ; and “ if upon sight of the rack he does not make a clear answer, then they are to cause him to be racked as in their discretions shall be thought fit.” This Archer was a glover, who had been supposed to be concerned in the tumultuous attack upon Archbishop Laud's palace at Lambeth, an offence which

¹ See Appendix, No. 55.

the doctrines of that day magnified into high treason against the State. A contemporary letter¹ says that "he was a very simple fellow, and racked in the Tower to make him confess his companions." This is the last *recorded* instance of the infliction of torture in England; and, as far as I have been able to discover, the last instance of its occurrence. It is not probable that during the troubles of the eight remaining years of his life and reign, Charles I. had ever again recourse to it: there is not a trace of it during the Commonwealth; and in the reigns of Charles II. and James II., when the revival of high prerogative doctrines and the profligacy of the Judges might have led us to expect it, there is not a single authentic instance of the application of the torture.

I have thus, Gentlemen, traced the history of this practice for the last century of its existence, and through the reigns of five successive sovereigns; and one of my reasons for doing this with more minuteness of detail is, that it has been suggested by several writers, and among others by the great authority of Mr. Hargrave², that the instances usually adduced are merely so many exceptions and irregularities, and that the general practice has been consistent with what they contend to have been the general rule, namely, the absolute illegality of torture

¹ Additional MSS. in the British Museum, No. 1467, p. 115.

² See Mr. Hargrave's Note to the Countess of Shrewsbury's Case, Howell's *State Trials*, vol. ii. p. 774.

at all periods of the history of English law. It appears to me, I confess, that the facts I have enumerated clearly establish an uniform practice the other way. They seem to me to show, not the casual, capricious, or unjust acts of particular kings or councillors, but a practice handed down and justified by a constant course of precedents as an unquestionable prerogative of the Crown, though directly opposed to the fundamental principles of reason and law, and condemned and denounced by the opinions of the wisest statesmen and lawyers at the very time they were compelled to act upon it. No doubt the assertion of the illegality of torture is in one sense strictly true. It was *not* lawful by the common law;—it was contrary to Magna Charta and many statutes; and therefore the Judges could not inflict it as a punishment in the ordinary course of administering justice. But it *was* lawful as an act of prerogative,—as an act of that power to which, according to the doctrines of those days, the laws belonged as a kind of property,—a power, which was superior to the laws, and was able to suspend the laws,—and which was the only and uncontrolled tribunal to judge of the necessity of such suspension.

This distinction between prerogative and law appears to me, Gentlemen, to account for the expressions of the high legal authorities, whose opinions on this subject I have read to you. When such writers as Fortescue, Coke, and Smith denounce

the use of torture as illegal, they must be considered as speaking of it with reference to the common law of England and its employment in the ordinary administration of justice ; but they would probably have admitted, that the use of the rack was lawful and justifiable by the English Constitution, if warranted by the special command of the King. I cannot help thinking, too, that this distinction, which, though obscure to us in these days of comparative liberty, was sufficiently plain and obvious two centuries ago, affords the only intelligible explanation of the resolution of the Judges in Felton's case. The King, in referring the question to the Judges, alludes to this distinction when he says, that " if the torture might be applied by *law*, he would not use his *prerogative* in this point ;" and upon this the Judges resolve that " *by the law* it cannot be done, as no such punishment is known or allowed by our law." That torture was " known and allowed " as an act of prerogative, the Judges must have been fully aware ; for besides the notoriety of the practice, several of the individuals who joined in this resolution, before they were raised to the Bench, were not unfrequently employed in examinations by the rack.

It is, however, probable that Rushworth, who was not a professed lawyer, and might therefore be technically inaccurate in his relation of a judicial proceeding, has mixed together two distinct occurrences in his account of this transaction. That Laud, or

some of the Council, threatened Felton with the rack in the course of his examination, may readily be believed. But it is not credible that either Charles or his Council, who well knew the extent of the prerogative in this respect, and had actually exercised it in the case of Monke¹ only two years before, should "fall into debate," as Rushworth represents them to have done, or consult the Judges respecting their power to administer the torture. There is, indeed, convincing evidence that Charles had been expressly advised of his power to use torture in this particular case; for among the documents at the State Paper Office relating to this transaction, there is a curious paper addressed to the King (evidently composed by a lawyer,) entitled "Notes for the Examination of Felton," which contains the following sentence: "Upon consideration of the effect of these examinations, Your Majesty may give further directions, if such presumptions and *indicia torturæ* shall appear as it may be fit to proceed in that course." The course of the transaction, Gentlemen, was probably thus: Felton was threatened with the rack by the Council; but as he at once confessed his own offence, and there were no reasonable presumptions, or *indicia*, that he had any confederates, there was no ground for applying the torture to him in order to extract evidence. It may be remarked too, that the King at this point of time,

¹ See *ante*, p. 53.

immediately after the Bill of Rights had passed, and in the midst of the great struggle between prerogative and popular rights, may not have thought it prudent to exercise this odious power in a case of such notoriety¹. After his examinations, and immediately before his trial, which did not take place for more than two months after his apprehension, Felton, though at first resolute in justifying his crime, is said by several historians to have expressed great remorse, and to have requested that his hand might be cut off before his execution as a part of his punishment, "which the King," says White Locke, "desired might be done; but the Judges said it could not be done by law, and he was hanged in chains." It can hardly be doubted that it was on this latter occasion that the Judges resolved that "no such punishment was known or allowed by our law;" and this would precisely correspond with the date of the resolution, as given by Rushworth, namely, the 14th of November,—a few days only before Felton's execution.

The circumstance that the torture-warrants were not directed to the common-law Judges appears to me to be a strong confirmation of the view which I have taken of the distinction between prerogative and law upon this subject. Only two instances

¹ Lord Dorchester, writing to the Earl of Carlisle at Venice, on the 30th of September, 1628, says, "There is no more had out of Felton than his first free confession; and no torture hath been used unto him." (State Paper Office.)

occur in which the warrants were directed to any of the judges of the superior courts of law ; and, for reasons which I have stated to you, it is doubtful whether either of them was executed. At all events, both these instances occurred at a period when the Judges had sacrificed the independence which to a certain extent they had maintained in the reign of Elizabeth, and had begun to act systematically as mere instruments in the hands of the Crown. The practice of employing the common-law judges in acts of prerogative, which had commenced in the reign of James I. and had fatally increased in that of his son, is mentioned by historians as one of the most fruitful sources of the popular discontents of those times. "The damage and mischief cannot be expressed," says Lord Clarendon¹, "that the Crown and State sustained by the deserved reproach and infamy that attended the Judges, by being made use of in acts of power. In the wisdom of former times, when the prerogative went highest, never any court of law, very seldom any judge or lawyer of reputation, was called upon to assist in an act of power ; the Crown well knowing the moment of keeping those the objects of reverence and veneration with the people, and that though it might sometimes make sallies upon them by the *prerogative*, yet the *law* would keep the people from any invasion of it, and that

¹ *History of the Rebellion*, Book I.

an accused person to the rack for the purpose of "putting him in fear of it," and the actual torture, which also corresponds with the "*territio*" and the "*tortura*" of the civilians. Many other points of similarity might be mentioned; but as it may be historically shown that the great body of our criminal jurisprudence was derived from Rome, it is unnecessary to enter into any elaborate proof of the origin of particular sections.

From a review of the various instances of the use of torture in England it is not difficult to collect several rules and principles by which the application of it was governed; and in some of these you will also trace a close resemblance to the Roman law. In the first place, I find not a single instance of its application to any persons of noble blood; and in the Countess of Shrewsbury's case¹, it is stated by the Judges, of whom Sir Edward Coke was one, to be a "privilege which the law gives for the honour and reverence of the nobility, that their bodies are not subject to torture *in causâ criminis læsæ majestatis*." In like manner, the Roman law declares that "*Milites, nobiles, senatores, decuriones, horumque liberi non sunt torquendi*." Nor are there during the five reigns to which I have referred any instances of women being exposed to regular torture: but Bishop Burnet, in the History of the Reformation (vol. i. p. 342.), mentions that Anne Askew, the celebrated Protestant martyr, was tortured in

¹ 12 Reports, p. 94.

² Wesenbechii Parat. ubi suprâ.

the Tower in 1546, and states that the " Lord Chancellor, finding the rack-keeper falter in his operations, threw off his gown, drew the rack himself so severely that he almost tore her body asunder." Burnet says there is no doubt that she was tortured, as he had seen a relation of the fact in an original journal of the transactions in the Tower. What the authority of this journal might be is uncertain, and there is no authentic record of the fact. The story of the Chancellor's barbarity is treated by Burnet himself as one of the fables of Fox's Martyrology, and entitled to no credit whatever. The case of the whipping of the maiden who feigned visions by the Bishop of Chester can hardly be considered as an instance of torture ; or, at all events, it is to be regarded as what the civilians call " *tortura levissima, quæ pro torturâ non habetur.*" It is most probable, that it was not a regular practice in England to torture females.

It does not appear that there was any particular class of inquiries to which this mode of examination was restricted. Murder, embezzlement, horse-stealing, and various felonies are found amongst the imputed offences to be investigated by torture ; and though Lord Bacon, in the treatise on the Pacification of the Church, says, that it was applied *for examination, and not for evidence* (a distinction not in itself extremely clear), in the highest cases of treason, the authentic instances of its application show that in practice no such limitation existed.

It is quite clear that the authority to examine by torture in this country must have been always derived *immediately*, and in each particular instance *specifically*, from the prerogative of the Crown. It must be "by the command of the King;" and this command must be signified, as Standforde says respecting warrants of commitment¹, "by the King's own mouth, or by the Council, which is incorporate with him, and speaks with his mouth." No magistrate or judge, and no individual Councillor or Secretary of State, was at liberty to use the rack or any of the lesser species of torture without a written warrant from the King himself, or from the Privy Council when assembled at the Board. But with the King and his Council a frightful extent of authority in this respect was vested; the very circumstance that the practice was unknown to the common law left its limits and restrictions altogether undefined, and removed all responsibility and control from the agents of prerogative. Those who used this dreaded engine among the numerous countries which adopted the Roman law, were bound by the letter of their code to use it with certain limitations and under definite rules and restrictions. By the Civil law judges and magistrates could only apply the torture upon their individual responsibility as to the fitness of the occasion; if they used it improperly, the offence was capital by

¹ *Pleas of the Crown*, p. 72.

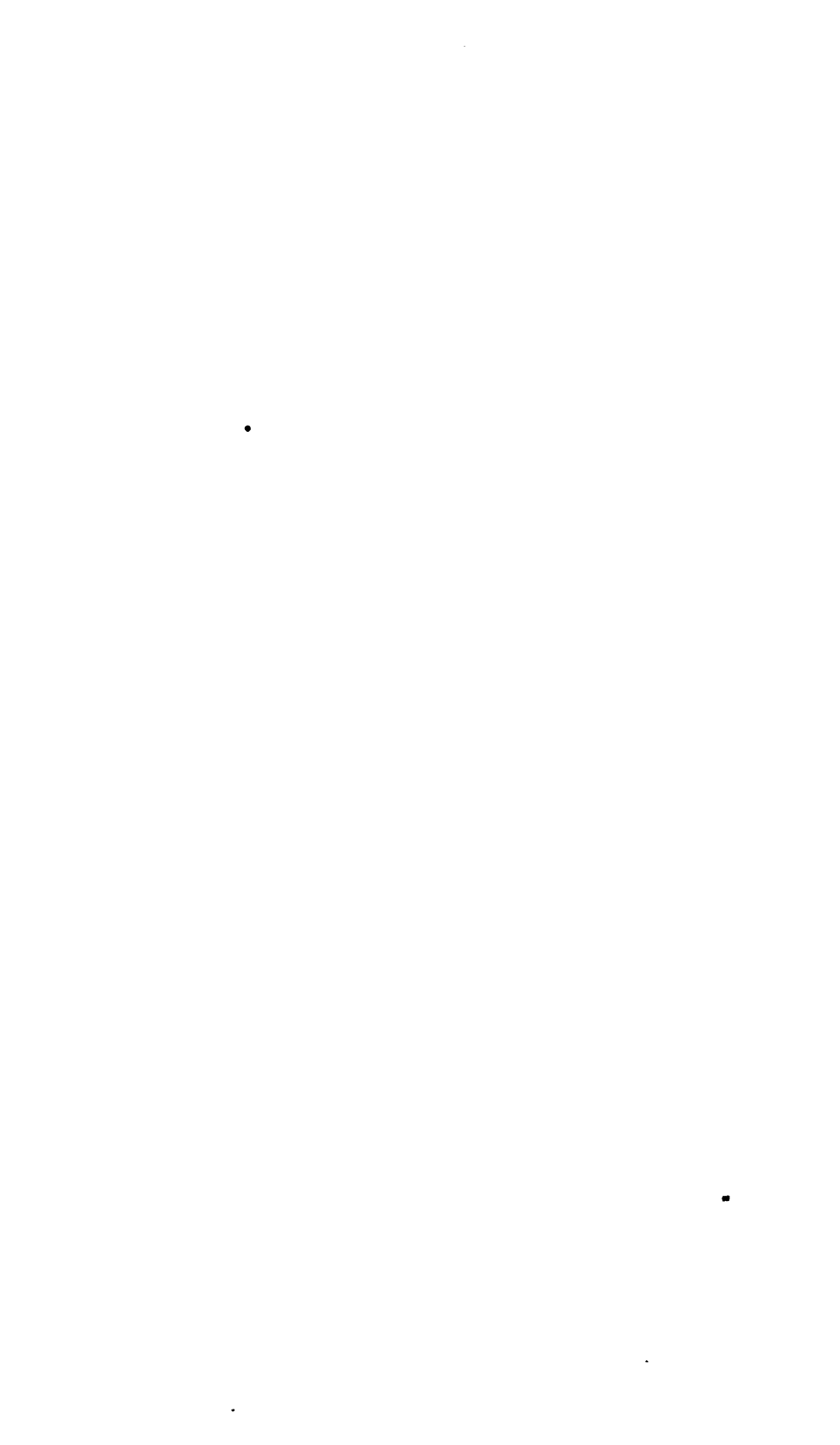
the letter of the law, and they were always liable to ignominious punishment and to make full compensation to the injured party. But in England the only limitation was the will of the sovereign. As to the fitness of the occasion, or the extent of the injury inflicted, there was no responsibility, and there were no rules ;—the written and the unwritten law were a blank upon the subject ; and if rules had existed, there was no power by the Constitution to enforce them ; so that an accused or suspected person, once inclosed within the fatal walls of the Tower, was, in the days of prerogative, wholly abandoned to the tender mercies of the Sovereign and his Council, and such agents as they chose to employ. This power of inflicting torture at pleasure at the mere instance of the Crown, has always appeared to me to be a very remarkable instance of the opposition of prerogative to law—of the existence in former times of a power above the law, controlling and subverting the law, and thus rendering its practical application altogether inconsistent with its theoretical excellence. Our most cherished and valuable laws, our best and oldest institutions were of no avail ;—Magna Charta was an empty name, and the trial by jury was a mockery and a farce, when, upon the bare authority of a royal warrant, a man could be carried away to the prisons of the Tower, and after his body had been duly attenuated, and his spirit broken and subdued by the horrors of Little Ease

and the "dungeon among the rats," be brought into court to make a formal answer to evidence extracted by the cruelties of the rack, or the manacles, or the Scavenger's Daughters.

In this and several preceding Readings, Gentlemen, it has been my object to illustrate the practical operation in former times of different oppressive branches of the prerogative upon the due administration of criminal justice. I ought not to conclude this part of the subject without reminding you that by far the greater part of these evils were abolished during the Commonwealth. How and by whom, and at what precise point of time this great reform was effected, is a question of extremely difficult solution; but there is no doubt that the practice of questioning juries for their verdicts, the exclusion of oral testimony, and the use of the torture,—all of which continued to disfigure the proceedings of courts of justice immediately before the death of Charles I.,—were wholly swept away during the ten years which succeeded that event, and were never afterwards revived. Just and rational principles of evidence, sound views of the object of penal laws, and of the proper means of enforcing them, first sprung up during the early years of the Commonwealth; and I confess I think that the merits of those great men whom Cromwell found it his interest to raise to the judicial station have never been sufficiently appreciated by their pos-

terity. Under the wise and moderate superintendence of such minds as Hale, Whitelocke, Windham, and Rolle, our judicial institutions underwent a total revision and reform. The law then for the first time became a protection to the subject against the power of the Crown ; and so well considered and substantial were the improvements then introduced, that they continued after the Restoration, and through the tumultuous and sanguinary reign which succeeded it. Though the barriers were still insufficient entirely to stop the encroachments of bad princes, encouraged and promoted by unprincipled judges, the administration of the Criminal law, even in the evil days of Charles II., was always better than it had been before the Commonwealth ; for the tide of improvement, having once set in, steadily continued to flow, until at length the increase of knowledge, and the power and proper direction of public opinion, led to the final subjection of prerogative to law at the Revolution of 1688.

APPENDIX.



APPENDIX.

No. 1.

5th Nov. 1551.

Council Book.

A LETTER to Sir Arthur Darcie and to all other that from tyme to tyme shall have the ordering of the Tower and the prisoners there. To suffer certain Commissioners newlei allotted to the examination of the prisoners within the sayd Tower, as by a supplement of the same closed in the said lettre (the coppie whereof remayneth in the Counsell chest) may appere, to have accesse to them when and as often as they shall think convenient. And further, to be assisting to the sayd Commissioners for the putting the prisoners or any of them to suche tortours as they shall thinke expedient.

No. 2.

7th Jan. 1552-3.

Council Book.

A Letter to the Lieutenant of the Tower to cause one Willson and Warren, lately taken upon suspition of a haynous murder, to be put to the tortours, when they or any of them shall be brought unto him for that purpose.

No. 3.

9th June, 1555.

Council Book.

A Letter to the Lord North and the reste of the Commissioners for the examination of prisonners to bring suche obstinat personnes as will not otherw ise confesse points

wherein they are touched to the tortures, and there to order them according to their discretions.

No. 4.

4th Dec. 1555.

Council Book.

A Letter to Sir Henry Bedingfield to receve the bodie of Richarde Mulcaster, servaunte to Doctor Caius, vehemently suspect of robbing his master, and by the best meanes he can to examin him hereof, and to bring him to the rack and putte him in feare of the torture if he will not confesse.

No. 5.

11th Dec. 1555.

Council Book.

A Letter to Sir Henry Bedingfelde, Sergeaunt Dier, and Mr. Sollicytor to examin substantially on Nicholas Curat, vehemently suspected of robbing Mr. Kealeway, according to such interrogatories as the said Mr. Kealeway shall deliver unto them for that purpose; and if they shall see cause whie, then to bring him to the racke and to put him to sum pain if he will not confesse otherwise.

A like letter to bring one Hughe of Warwicke, suspected for horse-steling, to the rack, and to do *ut supra*.

No. 6.

16th Feb. 1555-6.

Council Book.

A Letter to Sir Henrie Bedingfield to receve from Sir John Baker the boddies of Barton and Thomas Tailor, and to kepe them in safe custodie, and to joyne with the same Mr. Baker in the examyning of them, and to put them

upon the torture and paine them according to their discretions if they will not confesse their offences.

No. 7.

16th June, 1556.

Council Book.

It was this day ordered by my Lords of the Counsell that Sir Rich. Peckham, Mr. Lieutenant of the Tower and one of the Masters of the Requests, should examin one Richard Guyll, and to put him also to the tortours in case they shall think it so convenient.

23rd June, 1556.

A Letter to Mr. Bedingfield to deliver the boddie of Richard Gill, of late committed to his charge, to Mr. Morgan, to be by him conveyde to the countie of Dorset, where he committed the murder, to be there furer ordered according to justice.

No. 8.

29th July, 1556.

Council Book.

A Letter to Sir Roger Cholmeley and Dr. Marten, to repaire to the convict prison at Westminster, and there to procede to the further examination of Sillyester Taverner, prisoner there; who, having embeseled certeine plate and other goods, belonging as well to the Quene's Majestie as to sundry other persons besydes, will by no meanes hitherto declare where the same is become, notwithstanding the matter is allreadie confessed against him by two others. And therefore they are required, for the better atteyning of the truth, to put him to such tortures as by their discretions shall be thought convenient.

No. 9.

19th July, 1557.

Council Book.

A Letter to the Constable, &c. to examine such as Sir Edwarde Warner enforme them of, and to put them to the torture, if they shall thinke so good.

No. 10.

13th May, 1558.

Council Book.

A Letter to Mr. Cunstable of the Tower, Sir Roger Cholmeley, Mr. Recorder of London, Mr. Doctor Marten, and Mr. Vaughan, to procede in the examination of French, presently remayning prisoner in the Tower, and to bring him to the torture and to put him in feare thereof, and also to put him to the payne of the same, if they shall thinke so good.

No. 11.

15th March, 1558-9.

Council Book.

A Letter to the Lyeutenant of the Tower that where there remayneth in his custody the bodyes of one Pytt and Nycholls, for the robbing of a wydowe called Bate, in St. Ellyns in London, he is requyred to call the Knight Marshall unto him in this matter; and uppon examynation of the parties, if they shall obstynately persist in the denyall of their facte, he is willed to cause them to be brought to the racke, and to feale the smarte thereof as they by theyr discretions shall think good for the better bouldinge out of the truth of this matter.

No. 12.

22nd June, 1565.

Council Book.

A Letter to Lord Scrope, in answer of his letters wrytten to Mr. Secretarye, with the examination by him taken of Nycholas Hethe, whom his Lordship is required to procede somewhat sharpely withall, to the end he should declare the full truthe why he wandereth abroad. And if he will not be plane, to use some kinde of torture unto him, so it be without any grete bodily hurte.

 No. 13.

20th June, 1570.

Council Book.

A Letter to Justice Southcote, to cause one Thomas Andrewes, presently prysoner in the Marshalsey, to be brought to the Towre, and offered the torture of the racke theare, and examine him of his knowledge touchinge a very heinous murder lately commytted in Somersetshire, wherof the said Andrewes is vehemently suspected and will hitherto confesse nothing, although he hath been divers tymes examined thereupon. And after he shall have taken his confession, the said Mr. Southcote is willed to return him to the Marshalsey againe to be furder proceeded with according to the order of the law.

A Letter to the Lieutenant of the Tower to cause the said Andrewes, when he shal be brought unto him, to be set to the racke and offered the torture, and to be examined by suche as shall be appointed thereunto by Justice Westcn.

No. 14.

25th June, 1570.

Council Book.

A Letter to Sir Thomas Wroth and others, Her Majesty's Commissioners appointed for the examination of the Bull. Where by their letters it appeareth that John Felton, being charged by William Mellowes both for the having of the printed Bull and speache also with the Spanish Ambassador, he utterlie denieth it, and will in no wise confesse the truth. For the bouking out of the trothe thereof Their Lordships think it convenient that he be delivered to the Lieutenant of the Towre, wherebye he may be brought to the place of torture, and so put in feare thereof. And yf they shall perceve him to be obstinate and will in no wise confesse that which is to be demanded of him, that then to spare not to lay him upon it, to the end he may feele such smarte and paines thereof as to their discretions shall be thought convenient.

No. 15.

Elizabeth R.

By the Quene.

Right trusty and welbeloved we grete you well, and fynding in the traytoroos attempts lately discovered that nether Barker nor Bannister, the Duke of Norfolk's men, have uttred ther knolledg, nother will discover the same without torture; forasmuch as the knolledg hereof concerneth our suerty and estate, and that they have untruly allredy answered; We will and by warrant herof authoriss you to procede to the furder examynation of them uppon all poynts that you can thynk by your discretions mete for knolledg of the truth. And if they shall not seme to you to confess playnly ther knolledg, then we warrant you

to cause them both, or ether of them, to be brought to the rack: and first to move them with feare therof to deale playnly in ther answers, and if that shall not move them, then you shall cause them to be putt to the rack, and to finde the tast therof untill they shall deale more playnly, or untill yow shall thynk mete. And so we remitt the whole procedyng to your funder discretion, requiryng yow to use spede herin and to require the assistance of our Lieutenant of the Toure.

Gyven under our signet, the xvth of Septemb. 1571.

To our trustie and right well beloved Counsellors Sr Thomas Smyth, Kt. and to our trustie and well-beloved Doctor Wylson, one of the Masters of our Requestes.

(Indorsed)

Receaved at the Towir the xvj. daie of 7ber,
at eleven of the clocke in the forenoone,
1571.

No. 16.

17th Nov. 1577.

Council Book.

A Letter to Mr. Attorney Generall, signifying unto him that he shall receive the examination of one Thomas Sherwood, lately committed by the High Commissioners for hearing of a masse, and since examined by Mr. Recorder of London; which examination containing matter of High Treason againste her Majestie's person, Their Lordships have thought good to send unto him and require him, after he shall have substantiallie considered thereof, to acquaint the Lord Chief Justice therewith, and particular to give order that the said Sherwood be this terme arraigned and

proceeded against according to the laws of this realme in that behalfe provided; but before they procede to his arraignment, to take some pains further to examyn hym bothe upon the points of his confession, and also to see if he can discover any others of his knowledge to be of his opinion; and where, and of whom, he hath gathered the substance of his arguments contained in his said confession, wherein perchance he may boulte out some other matters or persons worthie to be known.

A Letter to the Lieutenant of the Tower, requiring him to receve into his hands of Mr. Recorder of London the person of Thomas Sherwood, and to retaine him close prisoner, and from conference with any person, untill suche tyme as he shall receive order from Mr. Attorney General, who is appointed to examyn him upon such matters as he is to be charged withall, and shewing this Their Lordship's letter to Mr. Recorder, which shall be his sufficient warrant for the delivery of him.

• He is required in a postscript that if the said Sherwood shall not willingly confesse such things as shall be demanded of him, he is then required to commit him to the don-geon amongst the rats.

No. 17.

4th Dec. 1577.

Council Book.

A Letter to Mr. Lieutenant Mr. Attorney, Mr. Solicitor, Mr. Recorder, or one of them, that where Their Lordships by their letters of the 26th of November do understand the paines they have taken in the examining of Sherwood in the Tower, for the which Their Lordships doe yield them their ryght hartie thanks; and where they signify by their

said letter that Sherwood doth not onlie stagger in his first confession, and faine would retracte his wordes, in respect he affirmed Her Majestie to be an herriticq and usurper, but also will in no case be brought to confesse or answer such other interrogatories as they have propounded unto him, Their Lordships are of opinion that, if he be used thereafter, he can discover other personnes as evil affected towards Her Majestie as himself; they are therefore to assaie him at the racke upon such articles as they shall think meete to minister unto him for the discovering either of the personnes or of further matter.

No. 18.

4th Nov. 1578.

Council Book.

A Letter to the Lieutenante of the Tower and the Recorder of London, that forasmuch as Harding can by no milde course of examination be brought to confesse the truthe of those things wherewith he is to be charged, they are required to be brought* to the racke, thereby to prove whether he will discover anie further matter than hitherto hath been reveyled from him. And where John Sanford, deeplie suspected to be privie to the dealings of John Prescottt, who by no mylde kinde of proceeding can be inducd to discover the truthe; these are likewise required to put him to the racke, and by means thereof to wreste from him the truthe of such things as in that respecte they shall finde he is suspected to be privie unto. And what they shall wring from him they are to certifie to Their Lordships accordingly.

* *Sic.*

No. 19.

9th Dec. 1580.

Council Book.

A Letter to Thomas Townsend, Henry Doyly, and William Blennerhasset. That wher Their Lordships understande that the house of Sir Drew Drury, Knight, called Cattön, hath of late bene robbed by certain rude persons, with the privitie of one Humfrey, a boy dwelling in the house; who, being since committed and examined touching the said robbery, refuseth to discover the reste of his complices; they are therefore required to call the said Humfrey before them, and to use the best means they may to induce him to confesse the robbery; which if he shall obstinately refuse to doe, then are they required by some slight kinde of torture, such as may not touch the losse of any lymbe, as by whipping, wring from him the knowledge of the persons and manner of the robbery; that thereupon order may be taken for their apprehension and punishment according to the lawes, &c.

No. 20.

24th Dec. 1580.

Council Book.

A Letter to the Lieutenant of the Tower, Sir George Caryé, Knight, Mr. Attorney and Mr. Solicitor General, signifying that among other persones lately arrested within the realme from Rome and other places beyonde the seas, with intent to pervert and seduce Her Majestie's subjectes, ther are apprehended one Harte and Bosgrave, committed unto the Marshalsea, and one other called Pascall,

imprisoned in the Compter of the Poultry, and are to be charged with matters of moment contained in the writings herewith sent unto them, requiring them upon the receipt hereof to cause them all three to be removed from the prisons where they remaine unto the Tower, and there bestowed in several prisons; and after they have substantially considered of the matters, to frame some interrogatories whereupon they may be examined as the rest have been, with the whome by Their Lordships' order they have already proceeded in that place; and if they shall refuse to answer plainly and directly unto the interrogatories, they may be brought then unto the torture, and by the terror thereof wring from them the truth of suche matters as they shall finde most necessary to be discovered.

No. 21.

State Paper Office.

Our duties remembered, &c. We have had two severall examinations of Thomas Myaghe, wherein we finde nothing but an improbable tale full of suspicion, not much increased by reporte of further matter then heretofore he hath declared to Your Honour, as by the examinations whiche we sende herewith maie appeare. We have forborne to putt him in Skevington's Yrons, for that we received charge from yow to examine hym with secrecie, whiche in that sorte we could not do, that maner of dealinge requiringe the presence and ayde of one of the jaylors all the tyme that he shall be in those yrons, and in this examination; and besides, we finde the man so resolute, as in our opinions litle will be wroonge out of hym.

but, by some sharper torture. Neverthelesse we are to referre this to Your Honor's consideration, and wilbe reddie tomorowe in the afternone, or at anie other tyme to attende upon your direction. So we take our leaves wishinge you prosperous helth this 10th of Marche, 1580.

Your Honor's to commaunde,

OWYN HOPTON.

JO. HAMMOND.

(Superscribed)

To the Right Honorable Sir Francis Walsingham,
Principall Secretarie to Her Majestie.

No. 22.

State Paper Office.

Our duties remembered, &c. We have agayne made two severall examinations of Thomas Myaghe, and notwithstandinge that we have made triall of hym by the torture of Skevington's Yrons, and with so mutche sharpnes as was in our judgement for the man and his cause convenient, yet can we gett from hym no farther matter then we have sent herewith in writinge. Of the man we thincke as we dyd before, that he can hardlie be innocent; and the circumstances discovered in this examination, do in our opinion shewe that the colour of his seconde sendinge to understande the forces of the enemye is but counterfeit matter, consideringe that the same was well knowne to hym at his first goinge unto them, wherein if he dissembles his knowledge to the Erle, there was litle cause whie he should be reputed a person of truste for anie suche service. Thus trustinge Your Honour will accept our

doinges in good parte, we commende the same to the tuition of th' Almightie. This 17th of Marche, 1580.

Your Honor's to commande,

OWYN HOPTON.

(*Superscribed*)

JO. HAMMOND.

To the Right Honorable Sir Francis Walsingham,
Principal Secretarie to Her Majestie.

No. 23.

30th July, 1581.

Council Book.

A Letter to Mr. Lieutenant of the Tower and Thomas Norton; That whereas Their Lordships have appointed Geoffrey Fenton, Her Majestie's Secretarie for the realme of Irelande, to repaire unto them for the examininge of Thomas Meaghe, heretofore committed to his charge, and to charge him with suche matters as he heretofore hath denied and now are certified from thence to be verified by depositions of witnesses. They are required uppon receipt hereof to call the said Meaghe before them; and in case, being confronted and charged with such matter as the said Fenton shall bringe with him, he shall wilfullie refuse to acknowledge the same, then it is thought meete that they deale with him with the racke in such sorte as they shall see cause. And to advertise Their Lordships of their doings as soon as convenientlie they may.

No. 24.

3rd May, 1581.

Council Book.

A Letter to the Lieutenant of the Tower, Doctor Hamond, and Thomas Norton, Gentlemen; That whereas there hath bene of laite apprehended among others a certaine

seminarie priest, or Jesuit, naming himself Briant, about whom there was taken divers bookes and wryghtinges carrying matter of High Treason, and is (as may by good likelihood be conjectured) hable to disclose matters of good moment for Her Majestie's service. Yt is therefore thought necessarie that he should bee to that purpose substantiallye examyned upon suche interrogatories as may be framed and gathered owt of the said bookes and wryhtings, which Their Lordships send them therewith. For the doing wherof especiallie choice was made of them three, and thereby authoritie given unto them to drawe the interrogatories and to examyne the said Bryant accordinglie; and if he shall refuse by perswasion to confesse suche thinges as they shall find him hable to revele unto them, then they shall offer unto him the torture in the Tower; and in case upon the sight thereof he shall obstinatelie refuse to confesse the truthe, then shall they putt him unto the torture, and by the paine and terror of the same wring from him the knowledge of such thinges as shall appertayne.

No. 25.

22nd June, 1581.

Council Book.

A Letter to the Bishop of Chester, giving him to understand of the receipt of his letter of the second of this present, and the copies of two fayned visions of a young mayden in that countye putt into writing and scattered abroad among the popish and ignorant people of his dyocese. And for that Their Lordships thinke it fytt by all possible meanes to have the inventors thereof founde owte and punished according to their desertes, he is required therein to doe his best endeavor to syft and bolt oute who be the authors, as well by examyning such as shall be found seised with the copies of the said visions,

as by causing the mayden (in case by fayer meanes she shall not confesse the same) to be secretly whipped and so brought to declare the truth of this imposture; whereby if he shall not prevaile, then to send her hether to Their Lordships to be further proceeded withall as shall appertayn.

No. 26.

30th July, 1581.

Council Book.

A Letter to Mr. Lieutenant of the Tower, Dr. Hammond, Robert Bele, and Thomas Norton, advertising them how they are further to proceede with Campion in manner as followeth: First, they shall demande of him whether he acknowledge himself to be Her Majestie's subject or no; which if he shall confesse, then shall they minister unto him a corporall othe uppon a Bible of St. Hierome's translation for avoiding of losse of time, and also of further cavill to be by him made hereafter, to answer trulie and directlie to such thinges as by them shall be demanded of him, &c. And uppon perusing of his former examinations, and consideration of suche pointes which he denieth to answer, and those which Their Lordships are desirous to have added to his former interrogatories contained in a paper herewith sent unto them, they are required to proceede to his further examination, and in case he continewe willfullie to deny the truth, then to deale with him by the racke. They are also required to take his answers to such articles as are herewith sent unto them touching one Rochfort, an Irishe man. With the two other priests they are required likewise to proceede in propounding unto them the questions of their allegiance to Her Majestie, and in ministering an othe to them to declare where they have layne, and whether there were a masse said in Mrs. Yate's house

or no at their last being there; and if they shall find them to hialte, then to put them in feare of the torture, &c. And after this, Mr. Lieutenant is required to sende [them] to the Knight Marshall, to remaine under his charge, for which purpose he shall receave Their Lordships' warrant unto him to receave them. Touching Weblie and Masfeld offering to conforme themselves; after they shall have caused them both to be dealt with by some godlie and learned preachers who upon conference maie perswade them voluntarilie in some open place to acknowledge their former error and offence, and promise to come to the Church and receave the sacraments by the lawes appointed, they maie, uppon bands taken of either of them to be of good behaviour towards Her Majestie's lawes, sett them at libertie.

Postscript. Whereas we are given to understande that you, Mr. Doctor Hammond, have out of Sanders's booke *De Monarchid Ecclesiæ* and Bristowe's *Motives*, drawn certaine points touching the acknowledgement of their allegiance towards Her Majestie; we think it goode that you propounded the same to Campion and the priestes, requiringe their directe answer to the same.

No. 27.

14th August, 1581.

Council Book.

A Letter to the Lieutenante of the Tower, Mr. D. Hammond and Robert Beale, or to anie three or two of them, thanking them for their paines taken in the examinations taken of Campion, and requiring Mr. Lieutenant to receive Philby and Jacob unto the prison of the Marshalsea. They are required to examine Campion, Peters, and Forde, who refuse to confesse whether they have said anie masses or no,

whome they have confessed, and where Parsons and the other priestes be, touching those points, and to put them in feare of the torture if they shall refuse to answer directlie thereto. And touching Keynes, Hildealey, and Cotton, who have confessed the hearinge of a masse at Mr. Yate's, &c., to understand from them what other persons were present there in their companie. Touching Paine sithence there are vehement presumptions that he is guiltie of the fact wherewith he is charged, they are to proceade to the torture with him and to examine him thereuppon. Touching the persones apprehended in Sir Ca. Stoner's house, they are to examine them severallie uppon the interrogatories enclosed. And Mr. Lieutenant is further required to receive into his custodie one Thomas Pounce, whom Their Lordships have thought meete to be sent unto him to be there jointly examined uppon such interrogatories as in Campion's examinations he is charged with.

No. 28.

29th Oct. 1581.

Council Book.

A Letter to the Attorney and Solicitor Generall, the Lieutenant of the Tower, Dr. Hammond, Thomas Wilkes, and Thomas Norton, for the examining of Edmund Campion, Thomas Fourd, and others, prisoners in the Tower, uppon certen matters, and to put them unto the racke, &c., according to the minute thereof remaining in the Councill chest.

No. 29.

29th April, 1582.

Council Book.

A Letter to Mr. Lieutenant of the Tower, Mr. Thomas

Randolph, Mr. Doctor Hammonde, and Mr. Owen of Lincoln's Inne, requiring them to repaire unto the Tower, there to examine one Thomas Alfield, a seminarie prieste, apprehended and committed thither, who, as it is supposed, is hable to discover many maters touching the practises and proceedings of Jesuites and seminarie priestes within the realme. They shall receive certen interrogatories for the examining of him from Mr. Attourney; and in case he shall not willingly discover such maters as they shall find him hable to declare in this behalf, that then they put him to the racke, and by the torture thereof drawe from him suche thinges as he shall be hable to saye, &c.

No. 30.

17th April, 1586.

Council Book.

A Letter to Sir Owen Hopton, Mr. Mackwilliam, and Mr. Younge, to put unto the torture of the racke one William Wakeman, alias Oavies, a notoriousse fellow, prisoner in the Tower, and thereby to make him to confesse suche misdemeanoures and robberies as he is to be charged withall and is privie unto of others.

13th May, 1586.

A Letter to the Lieutenant of the Tower to cause the persons of Wakeman alias Oavyes, Beaumont alias Browne, Pynder alias Pudsey, committed to the Tower, being notorious fellows, to be there examined by torture for the discovery of certain felonies committed by them and their complices. To be conveyed to the gaol of Newgate, there to remaine till they be furder proceeded with and tried according to the qualitie of their offences. And this shall

be as well to him as to the keeper of Newgate a sufficient warrant for the delivering and receiveing of the said prisoners.

No. 31.

23rd Dec. 1586.

Council Book.

A Letter to Sir Owen Hopton, Knight ; Ralfe Ruggie, Master of St. Katherine's ; John Popham, Her Majestie's Attorney; Thomas Egerton, Her Majesties Sollycitor; Sands, Clerke of the Crowne; and Thomas Owen, to examine these persons whose names ar underwrytten uppon such interrogatories as they should think meet for the manyfesting of suche treasons against Her Majestie and the realme as they were charged with or suspected of; and yff the truthe might not by convenient meanes be gotten of them, then to put them to the torture of the rack in suche sorte as to their dyscretions and due considerations should seeme convenient.

Edward Wyndsor,	Anthony Tuchenor,	Henry Foxwell,
Edward Bentley,	Thomas Abbington,	Thomas Heath.
Ralf Ithell,	Jerome Payne,	
Thomas Tipping,	Sampson Loame,	

No. 32.

24th April 1587.

Council Book.

A Letter to Sir Owen Hopton, Knight, Thomas Randolph, Henry Killigrew, Richard Yonge, Esquiers; That whereas one Andreas Van Metter, prisoner in the Towre, stooed charged with certain matter concerning Her Majesties state and person, which he did obstinatelie refuse to confesse;

Their Lordships required them, if he should still persiste in his said obstinacie, to use the accustomed torture of the racke as oftentimes as they should see cause to force him to confesse what might be had out of him towching the said matters.

No. 33.

7th Jan. 1587.

Council Books.

A Letter to Sir Owen Hopton, Mr. Daniell, Mr. Yonge; that whereas of late there were discovered certaine lud persons, who were to be charged with disobedience, misbehaviour, and practices against the state and present government, which allreadie were examined by Richard Yonge, Esquier, but would not be brought by faire meanes and good persuacions to utter their knowledge in divers matters concerning Her Majestie and the State; They are required to call to them the said Mr. Yonge, and to examine such persons as were sent inclosed contained in a schedule, especiallie John Staughton and Humfrey Fullwood, who were deeplier charged than the rest; and if they should shew themselves obstinate and perverse as they have done heretofore, that they should carrie them to the Tower, there to be kept close prisoners, and to be putt to the racke and torture to compell them to utter their uttermost knowledge in all matters they dealt in or are privie unto.

No. 34.

25th Oct. 1591.

Council Book.

A Letter to Doctor Fletcher, Richard Topclyffe, Richard Brantwhayte, and Richard Yonge, Esquiers. Whereas one

Eustace Whyte, a semynarye prist, was of late taken and there was also one **Brian Lassy**, a disperser and distribute of letters to papistes and other evyll affected subjects apprehended in lyke sorte; These shall be therefore to will and require you to take the examynations and confessions of both the said persons, and verie straightly to examyn them upon soche articles as you, **Richard Topclyffe**, shall administer unto them; and if they shall not declare their knowledges, and answer directly to all soche matters as you shall thynke meet and necessary to be propounded unto them, then shall you by vertue hereof, for the better bouldinge forthe of the truthe, cause them to be put to the manacles and soche other tortures as are used in **Bridewell**, to th' end they may be compelled to utter soche thinges as shall concerne Her Majestie and the Estate; and their examynations so taken by you, we pray you to send the same unto us.

No. 35.

27th Oct. 1591.

Council Book.

A Letter to Mr. Attorney, Mr. Solycitor. Whereas **Thomas Clynton** beinge by us comytted close prysoner unto the Fleete, is to be dealt withall and examynynd upon certaine artycles and matters which alreadye have been delivered unto you; These shall be to require you strictlye and severelye to take his examynation concerninge those matters; wherein if he shall not deale plainelie and truelye in declaringe the truthe of those things which shall be demanded of hym, then you shall send for **Mr. Topcliff** and **Mr. Yonge**, Esquiers, and cause hym to be by them removed unto **Brydewell**, and there to be putt to the manacles and

soche torture as ys there used, wherebye he maye be compelled to utter the truth and his own knowledge in those matters which are fytt to be known.

No. 36.

4th June, 1592.

Council Book.

A Letter to Sir George Cary, Knight, and Mr. Richard Yonge. Whereas Owen Edmondcs, Irishman, standeth at this present chardged verie deeplie with matters concerning the State, and that it seemeth ther is good proof against him for the matters whereof he is so chardged, notwithstanding he obstinately refuseth to confes the same; These shall be therfore to will and require you to remove the said Owen Edmondcs from the prison of the Marshalsey, where he presently remaneth, to Bridewell; where, after you shall have examined him agayne touchinge the premises, if he shall still persist in his obstinacye, you shall, by vertue hereof, put him to the torture accustomed in suche cases untill he shall be conformable as [in] your good discretions shall be thought fit. And so praecing you to have care thereof as apperteyneth, we, &c.

No. 37.

8th Feb. 1592-3.

Council Book.

A Letter to Mr. Richard Yonge and Mr. Ellis, to take order that Unstone and Edward Bagshaw, prisoners in the Gatehouse at Westminster, and Henry Ashe in Newgate, London, be removed to Bridewell, to be proceeded with there as shall be directed from Her Majestie's Attorney and Sollicitor General, and in case of need to punish them with the torture as in such case is accustomed.

No. 38.

16th April, 1593.

Council Book.

A Letter to the Lord Maior of London. Whereas there was a lewde and vyle ticket or placarde set up upon some post in London, purporting some determinacion and intention the Apprentyces should have to attempt some vyolence on the Strangers, and Your Lordship, as we understande, hath by your careful endeavour apprehended one that is to be suspected and thought likelie to have written the same. Because oftentimes it doth fall out of such lewd beginnings that further mischefe doth ensue if in time it be not wyselie prevented, Wee have thought good to prairie Your Lordship to cause the person by you apprehended and committed upon suspition to have written that libell, to be strictlie and verie carefullie examined of his meanyge and purpose to make that writing, who were any waie privie to the same, and did give him advice or encouragement in what he is hable to discover of that fact. And if there shall be pregnant matter to argue him to be guiltie of the writinge of the said placarde, and yet he will not by faire meanes be brought to utter his knowledge, wee think it convenient he shall be punyshed by torture used in like cases, and so compelled to reveale the same. We trust you are soe carefull in the government of the Citty, as if some lewde persons had such wicked purpose to attempt any thing against Strangers, that by your carefull forsyghte the same shall be prevented. And herein wee prairie you to certifie what you shall further understande and learne by the examination of this lewde fellow or by anie other meanes.

No. 39.

11th May, 1593.

Council Book.

A Letter to Sir Richard Martin, Anthonie Ashley, Mr. Alderman Buckle, &c. There have bin of late divers lewd and mutinous libells set up within the Citie of London, among the which there is some set upon the wal of the Dutch Churchyard that doth exceed the rest in lewdnes; And for the discoverie of the author and publisher thereof Her Majestie's pleasure is that some extraordinarie paines and care be taken by the Commissioners appointed by the Lord Maior for examining such persons as maie be in this case anie waie suspected. Theis shall be therefore to require and authorize you to make serch and apprehend everie person so to be suspected, and for that purpose to enter into al houses and places where anie such maie be remaying; and upon their aprehension to make like serch in anie the chambers, studies, chestes, or other like places, for al manner of writings or papers that maie give you light of the discoverie of the libellers. And after you shall have examined the persons, if you shall find them dylie to be suspected and they shall refuze to confesse the truth, you shall by authoritie hereof put them to the torture in Bridewel, and by the extremitie thereof, to be used at such times and as often as you shall think fit, draw them to discover their knowledge concerning the said libells. We praie you herein to use your uttermost travel and endeavour, to th' end the author of these seditious libels maie be known, and they punyshed according to their deserts. And this shall be your sufficient warrant, &c.

 No. 40.

12th Nov. 1595.

Council Book.

A Letter to Her Majestie's Sollicitor General and Mr.

William Wade, Esquier. Whereas there is one Gabriel Colford lately apprehended, that brought certain seditious books from beyond the seas into the realm, being a most lewd person, as wee do understand, and one that is employed for the fugitives beyond the seas in messages hither into the realm: And there is also a tailor dwelling in Fleete street taken in his company called Thomas Foulkes, in whose house this Colford did lodge both now and at other times when he came over hither from the parties beyond the seas: Forasmuch as these parties, having been often examined by the Lord Chief Justice of Her Majestie's Bench, will not by good and fair meanes be brought to reveale those things within their knowledge concerning Her Majestie and the State, These shall by vertue hereof to require you to put them to the torture of the manacles in Bridewell, that they may be forced to utter the uttermost of their knowledge in those things that shall concern their dutie and allegiance, and is meet to be by them most trowlie declared. And so wee bid you farewell, &c.

No. 41.

25th Jan. 1595-6.

Council Book.

A Letter to Sir Thomas Wilkes and Mr. Wade. There hath been of late apprehended and committed to Bridewell one John Hardie, a Frenchman, of the age of xxtie yeares or thereabouts, come into the realme for noe good purposes, as maie be conjectured, for that there have bene found about him secretlie sewed up in his dublett divers letters and memorialls, containing matters of great suspition which he refuseth to disclose; Her Majestie's pleasure therefore is, that forthwith uppon the receipt hereof you peruse the said letters and memorialls, out of which you maie con-

ceave articles and interrogatories to be by you ministered unto him, and soe to examine him verie secretlie thereuppon, and of the causes of his coming hither, and to what persons he hath bene addressed here within the realme; and if he shall refuse to bewray the truth of such thinges and circumstances as you shall probable see maie be laide to his chardge, then shall you by authoritie hereof trie him by the ordinarie torture there in Bridewell, and by the paine and terror thereof drawe him to confesse and discover his knowledge of the matters committed to his chardge, and his intentions here to have bin putt in execution. And this shall be your warrant, &c. &c.

No. 42.

Last day of Feb. 1595.

Council Book.

A Letter to Sir Richard Martin. These are to give you verie hartie thanks for the extraordinarie paines you have taken in the apprehending and examining of Humphrey Hodges, out of whom wee perceave you have gotten much matter fit to be prosecuted and punished according to law, howbeyt that he hath not yet, as appeareth by your letters directed to me, Sir Robert Cecill Knight, discovered his whole knowledge what is become of the hundred poundes hid in the ground; and wee pray and require you therefore presentlie to remove Hodges to Bridewell, and to put him to the manacles, thereby constrayning him to deliver the whole trewth to such questions as you shall in this behalf think fit to administer unto him; whereof we pray you to continue your care and good endeavour.

No. 43.

21st Nov. 1596.

Council Book.

A Letter to the Recorder of London, Mr. Topcliffe, and Mr. Skevington. Whereas there were of late certaine lewd persons, to the number of 80, gathered together, calling themselves Egipcians and wanderers through divers countyes of the realme were stayed in Northamptonshire, whereupon we caused some of the ringleaders of them to be brought up hither and have committed them to prison. Theis shall be to require you by vertue hereof to examine the said lewd persons upon suche artycles and informations as you shall receive from the Lord Cheife Justice of Her Majestie's Benche; and yf you shall not be hable by faire meanes to bringe them to reveale their lewd behavior, practyses, and ringleaders, then wee thinke it meet they shall be removed to Brydewell and there be put to the manacles, whereby they may be constrained to utter the truth in those matters concerning their lewd behaviour that shall be fitt to be demanded of them.

 No. 44.

19th Dec. 1596.

Council Book.

A Letter to Mr. Attorney and Mr. Sollycitor General, Mr. Francis Bacon, and Mr. Recorder of London, or to anie two of them: You shall understand that there hath been of late a very detestable practize and conspiracye discovered of certaine lewde persons that intended to make a risinge and a commotion in the countie of Oxford, and to drawe more nombers to them out of other counties adjoyninge, as you shall more particularly understand by the examinations that have been taken of them by our very good lord, the Lord Norreis, and some other justices of that countie,

By whose indevors divers of those seditious persons are apprehended, and by our directions fower of the ring-leaders are sent upp hether, whome we have caused to be commytted to sundry prysons, Bartholomew Starr to Newgate, James Bradshawe to the Compter in Wood-Street, Richard Bradshawe to the Clyuck, and Roger Isbell to the Fleete, and one more of this crewe that was apprehended here (whose name is Robert Burton) was commytted to the Gatehouse in Westminster: Because yt is requisite the bottome of thes wicked practizes should thorrowlie be dyscovered, whereof they had there begynnynges, what partakers they had, and what further myscheefe they did intende, These shall be to require and authorize you to send for those persons or anie other that maie be touched in the matter; and after you have perused the former examinations, to procede further to examine them uppon such articles as you shall think meete to be propounded unto them. And for the better bowlinge forth of the truthe of there intended plotts and purposes you shall (as you shall see cause) remove them to Brydewell, and cause them to be put to the manackles and torture, that they maie be constrayned thereby to utter the whole truthe of their myschevous devyses and purposes in this wicked and trayterous conspiracy. Whereof we prairie you to advertize us from tyme to tyme, &c.

No. 45.

2nd Feb. 1596-7.

Council Book.

A Letter to Mr. Attorney-General, Mr. Sollicitor, Mr. Frauncis Bacon, and Mr. William Waad: Whereas there is lately apprehended one William Tompson, a very lewde and daungerous person, that is charged to have a purpose

to burne Her Majestie's shipps, or to doe some notable villanye : These shall be to require you to examyne the sayde Tomson upon such articles as are delivered to you, William Waad, towching his sayde divellishe purposes and intents, and to deale earnestly with him by suche perswasions as you shall thinke meete to declare by whome he hath bin moved thereunto, and who are privye or partakers in his sayde intended purposes, and what further practises or intent he had or can discover. Wherein, if by faire meanes and perswasions he shall not be moved to reveale unto you the whole truth in these matters, then you shall by vertue heerof cause him to be put to the manacles, or the torture of the racke, as in like cases hath been used, thereby to force him to declare the truthe, and circumstances of his whole intent and purposes heerein, and suche further matter resting in his knowledge concerning Her Majestie or the Estate as shall be fitt to be drawne from him. And so, &c.

No. 46.

1st Dec. 1597.

Council Book.

A Letter to Sir Richard Martin, Mr. Recorder of London, Mr. Topcliffe, Mr. Fowler, Mr. Ask, Mr. Vaughan, and Mr. Skevington, or any two of them, requiring them to examine one Thomas Travers, prisoner in Brydewell, being detected for stealing a standyshe of Her Majestie by examination of wytnesses, and yet he still persisteth in obstynate denyal thereof; and yf he shall not declare the truth by your persuasion, then to put him to the torture of the manacles.

No. 47.

17th Dec. 1597.

Council Book.

A Letter to Mr. Recorder of London, Mr. Topcliffe, Nicholas Fuller, Mr. Gerard, and Mr. Altham. Whereas the body of Richard Aunger, a double reader of Graye's Inne, was found on Tuesday last floating on the Thames, he having been myssed almost a moneth. Because upon view of the body by certaine skillful chirurgeons yt is not thought he was drowned in the water but styfled or murdered, and after throwne into the Thames, which by other conjectures is greatlie to be also suspected; and there are great presumptions against one of his sonnes, called Richard Aunger, and Edward Ingram, porter of Graye's Inne, to be the committers of that foule murder. Forasmuch as the facte is so horrible that an auneynt gentleman should be murdered in his chamber, yt is thought meete that the manner of this foule murder should be by all meanes found out. And therefore we have thought good to require you to examyne the porter of Graye's Inne, and Richard Aunger, the sonne, more stryctly upon suche articles as you shall thinke meete, upon former examynations and other circumstances to be propounded unto them. And if by those persuasions and other meanes you shall use, you shall not be able to bringe them to confesse the truthe of this horrible facte, then we require you to put them both or either of them to the manacles in Brydewell, that by compulsory meanes the truthe of this wicked murder may be discovered, and who were complices and privy to this confederacy and fact.

No. 48.

4th Jan. 1598-9.

Council Book.

A Letter to Sir John Peyton, Knt., Lieutenant of the Tower, and Richard Topcliffe, Esq. Whereas wee understande that in a privye searche made by you the last nighte there were apprehended two persons, namely, Richard Denton and Peter Cooper, (who were lodged in the house of one Egglestone in Finsberry Fields,) that are supposed to be privie unto some dangerous practise against the person of Her Majestie and the State, as by some secrete intelligence hath bin already somewhat discovered; wee do therefore praie and require you to cause the said Denton and Cooper to be committed to the prison of Bridewell, and to take order for the streight examination of them there by yourselves, using such meanes of torture by the manacles as you shall finde needful to make them particularlie discover and declare the truth of the said practice, and to certifie us of your proceedings herein, which is to be done with dilligence and convenient speed. So wee bidd, &c.

 No. 49.

*Original in the
State Paper Office.*

19th April, 1603.

After our hartie commendations to Your Lordship. Whereas we have geven order for the committing to the Tower of one Phillip May for some matters wherewith he is charged concerning the State which are particularly knowne unto Your Lordship, about the which we think it fitt he should be further examyned to discover the further intents of the said practice. These are therefore to pray Your Lordship and the rest, to take some convenient tyme to examyne the said Phillip Maye upon such poyntes

as you shall think meete to charge him ; and as you shall find occasion you may put him to the torture of the racke, the better to drawe from him a confession of the truth if otherwise he will not be induc'd to confesse playnely the matters of the said practise. And so we bidd you hartilie farewell. From Whitehal, this 19th of Aprill, 1603.

Your Lordship's verie loving Frenedes,

Notingham. E. Worcester.

Howard.

W. Knollys. Ed. Wotton.

J. Stanhope. E. Bruce.

Lord Chiefe Justice.

Lieutenant of the Tower.

Mr. Attorney.

Mr. Sollicitor, or any two or more of them.

On the outside this warrant is addressed "To our very good Lord the Lord Chiefe Justice of England, Sir John Peyton, Knt., Lieutenant of the Tower, Edward Coke, Esq., the King's Majesty's Attorney General, and Thomas Fleming, His Majestie's Sollicitor, or to any two or more of them."

No. 50.

20th April, 1603.

*Original in the
State Paper Office.*

After our hearty commendations. Whereas one Phillip Maye hath been accused for uttering moste lewde and disloyale speeches, and being committed to the Tower and there exanynd, thoughe he doth not acknowledge those words that most bewray his corrupt and trayterous disposition, yet he doth confesse all the other matter and circum-

stances informed against him, and so fayntly doth deny the same as there is lyttle doubte of the truth of the accusation. These trayterous speeches concerning the person of our dread Sovereign the King's Most Excellent Majestie, wee in all dutie to His Highness do thinke it meete that he be dealt with [with] all severity, not only to confesse playnely those haynous speeches he used, but to make a true and playne declaration of the cause that moved him to utter the same; of whom he hath heard any such speeches, with whom he hath had any conference touching such matters, and such like questions as you shall thinke meete to be mynistered unto him. Wee doe therefore requyre you to repayre again to the Tower, and to examyne him of the said matters, and if he shall not deale playnly and truly to discover the depth of his knowledge, mynde, and conference in all these matters, then you shall by virtue hereof put him to the manacles, or such other torture as is used in the Tower, that he may be inforced to reveale the uttermost of his knowledge in any practise, purpose, or intent against His Highness. For your better proceeding herein accordingly these shall be your warrant; so fare you hartely well. From the King's Majestie's Pallace of White hall, the 20th of Aprill, 1603.

Your verie loving Friends,

Tho. Egerton, C. S.	T. Buckhurst.
Notingham.	Jo. Cant. Howard.
E. Worcester.	W. Knollis. Ed. Wotton.
J. Stanhope.	E. Bruce.

Lieutenant of the Tower.

Mr. Attorney.

Mr. Solicitor, Mr. Waad, or any thre.

Addressed on the outside, "To our loving friends Sir Johu

Peyton, Knt., Lieutenant of the Tower of London, Edward Coke, Esq., His Majestie's Attorney Generall, Thomas Fleming, Esq., His Majestie's Sollicitor Generall, and William Waad, Esq., one of the Clerkes of His Majestie's Pryvy Counsel, or to any thre of them."

No. 51.

18th Jan. 1614-5.

Council Book.

A Letter to Sir Ralph Winwood, Knt., His Majestie's Secretarie of State, Sir Julius Cæsar, Knt., Master of the Rolls, of His Majestie's Privie Councill, Sir Gervaise Helwishe, Knt., Lieutenant of the Tower, Sir Francis Bacon, Knt., His Majestie's Attorney Generall, Sir Henry Montague, Knt., His Majestie's Serjeant at Lawe, Sir Henry Yelverton, Knt., His Majestie's Solicitor Generall, Sir Randall Crewe, Knt., His Majestie's Serjeant at Lawe, and Francis Cottington, Esq., Clerke of his Majestie's Privie Councill, and to every of them; Whereas Edmund Peacham, now prisoner in the Tower, stands charged with the writing of a booke or pamphlett containing matters treasonable (asis conceived), and being examined thereupon refuseth to declare the truthe in those points whereof he hath bene interrogated. Forasmuch as the same doth concerne His Majestie's sacred person and government, and doth highly concerne his service to have many things yet discovered touching the sayd booke and the author thereof, wherein Peacham dealeth not so clerelie as becometh an honest and loyale subject; These shall be therefore in His Majestie's name to will and require you and every of you to repaire, with what convenient diligence you may, unto the Tower, and there to call before you the sayd Peacham, and to examine him strictly upon such interrogatories con-

cerning the sayd booke as you shall think fitt and necessarie for the manifestation of the truthe. And if you finde him obstinate and perverse, and not otherwise willing or readie to tell the truthe, then to putt him to the manacles as in your discretions you shall see occasion. For which this shall be to you and every of you sufficient warrant.

No. 52.

19th Feb. 1619-20.

Council Book.

(Sir E. Coke present.) A Letter to the Lieutenant of the Tower of London. Whereas Samuel Peacock was heretofore committed prisoner to the Marshalsea, and that now it is thought fitt, upon vehement suspicion of highe treason against His Majestie's sacred person, to remove him thence and to committ him to the Tower; This shall be therefore to will and require you to repare to the prison of the Marshalsea, and there to receive from the Keeper of that House the person of the said Samuel Peacock, and him safely to convey under your custodie unto the Tower of London, where you are to kepe him close prisoner until further order. And whereas wee have thought meete to nominate and appointe Sir Henry Montague, Knight, Lord Chiefe Justice of the King's Bench, Sir Thomas Coventrie, Knight, His Majestie's Sollicitor General, and yourself, to examine the said Peacock, for the better discovery of the truth of this treason. This shall be likewise to authorize you, or any two of you, whereof yourself to be one, to examine the said Peacock from time to tyme, and to put him, as there shall be cause for the better manifestation of the truth, to the torture either of the manacles or the racke. For which this shall be your warrant, and soe, &c.

No. 53.

9th Jan. 1621-2.

Council Book.

A Letter to Mr. Serjeant Crewe and Mr. Attorney General, to repare to the Tower and to examine one James Crasfield, prisoner there, for causes knowen unto them ; and if there shall be cause, not only to offer him the manacles and rack, but to use the same as in their discretion they shall find requisite for discovering the truth of such pointes whereupon he is examined.

No. 54.

30th April, 1626.

Council Book.

A Warrant to Sir Allen Apsley, Knight, Lieutenant of the Tower, Mr. Serjeant Ashley, Mr. Trumbull, and Mr. Mewtas, or any two of them, to take into examination William Monke, close prisoner in the Tower, upon such interrogatories as should be directed by the Lord Chiefe Justice of the King's Bench, and to use the manacles to the said Monke if in their discretion they shall thincke it fitt. And thereupon to certefie the Board what they finde.

No. 55.

*Copy in the
State Paper Office.*

Trusty and wellbeloved, we great you well. Our will and pleasure is that tomorrow morning, by seaven of the clock, you cause John Archer to be carried to the rack, and that there youreself, together with Sir Ralph Whitfield and Sir Robert Heath, Knights, our Serjeants at Lawe, shall examine him upon such questions as our said Serjeants shall

thinke fitt to propose to him. And if upon sight of the rack he shall not make a cleare answer to the said questions, then our further pleasure is that you cause him to be racked as in your and their discretions shall be thought fitt. And when he shall have made a full answer, then the same is to be brought to us, and you are still to deteyne him close prisoner till you shall receive further orders. And this shall be as well to you as to our said Serjeants sufficient warrant and discharge in this behalfe.

Given under our signett at our Court at Whitehall.

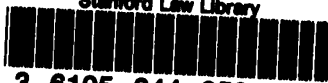
21 May, 1640.

To our trusty and welbeloved Sir William Balfour, Knt.,
Lieutenant of our Tower of London.

THE END.



EH AJG YK
A reading on the use of tortur
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